(15)

No. 06-219

In the Supreme Court of the United States

CHARLES WILKIE, ET AL., PETITIONERS

v.

HARVEY FRANK ROBBINS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: AUG. 11, 2006
CERTIORARI GRANTED: DEC. 1, 2006

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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 98-CV-201-CAB

HARVEY ROBBINS, PLAINTIFF-APPELLEE

v.

CHARLES WILKIE, ET AL., DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	PROCEEDINGS
2/18/04	[1686808] Civil case docketed. Preliminary record filed.
2/24/04	[1688302] Briefing of the merits is tolled pending further order of the court. Order filed by PF (crr) considering this case for summary disposition under 10 Cir. R. 27. Within 30 days appellant shall serve and file a memorandum brief. Plaintiff shall file memorandum brief in response within 21 days of the date of service of the appellant's memo brief. Apet memorandum briefs due 3/25/04 for Charles Wilkie, et al. Eres memorandum brief due 4/15/04 for Harvey Frank Robbins.

DATE	PROCEEDINGS
2/25/04	[1689041] Appellee's motion to dismiss appeal for lack of appellate jurisdiction filed by Harvey Frank Robbins.
2/26/04	[1689155] Appellee's response filed by Harvey Frank Robbins to court's order dated February 24, 2004 regarding filing of memorandum brief regarding 10th Circuit Court's appeal jurisdiction.
3/29/04	[1697496] Appellants' memorandum brief and response to motion to dismiss appeal filed by Charles Wilkie, et al.
4/2/04	[1698365] Appellee's Response filed by Harvey Frank Robbins to Appellants' Memorandum Brief and Response to the Court's Motion to Dismiss Appeal.
10/7/04	[1746617] Order filed by PF (err) the court reserves judgment on the motion to dismiss and the jurisdictional issue raised in this court's show cause order. Briefing on the merits shall proceed. The appellants shall serve and file their opening brief within 40 days of the date of this order. Subsequent briefing shall proceed in accordance with the schedule set forth in the Tenth Circuit Rules. Appellant's brief and appendix due 11/16/04 for Charles Wilkie, et al.

DATE	PROCEEDINGS
11/17/04	[1757972] Appellants' brief filed by Charles Wilkie, Darrell Barnes, Teryl Shryack, Michael Miller, Gene Leone, and David L. Wallace. Appendix filed.
12/21/04	[1766576] Appellee's deficient brief filed by Harvey Frank Robbins in 04-8016 (no statement inside brief regarding oral argument). Appellee's corrected brief due 1/3/05 for Harvey Frank Robbins.
12/22/04	[1766949] Order filed by PF granting Appellee's motion to file a supplemental appendix.
12/22/04	[1767413] Amicus Curiae brief filed by Pacific Legal in 04-8016.
12/27/04	[1767893] Appellee's corrected brief filed by Harvey Frank Robbins in 04-8016.
1/13/05	[1772936] Appellee's supplemental authority filed by Harvey Frank Robbins.
1/25/05	[1775513] Appellants' reply brief filed by Charles Wilkie, Darrell Barnes, Teryl Shryack, Michael Miller, Gene Leone, and David L. Wallace in 04-8016.
9/14/05	[1845317] Case argued by Edward Himmerfarb, for appellant and by Marc R. Stimpert, for appellee; Submitted to Judges Kelly, Henry, Murphy.

DATE	PROCEEDINGS
1/10/06	[1876964] Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Kelly; Henry; Murphy, authoring judge.
2/24/06	[1891952] Petition for rehearing en banc [04-8016] filed by Charles Wilkie, Darrell Barnes, Teryl Shryack, Michael Miller, Gene Leone, and David L. Wallace in 04-8016.
3/21/06	[1899624] Appellants' motion to stay the mandate until 6/12/06 filed by appellants Charles Wilkie, Darrell Barnes, Teryl Shryack, Michael Miller and Gene Leone, David L. Wallace in 04-8016 to stay execution of the mandate until 6/12/06.
3/21/06	[1899647] Order filed by Judges Kelly, Henry and Murphy denying Appellant's motion to stay execution of the mandate until 6/12/06.
3/22/06	[1899961] Mandate issued.
3/29/06	[1902226] District Court order extending stay pending appeal on qualified immunity filed.

UNITED STATES DISTRICT
COURT FOR THE DISTRCT OF WYOMING
(CHEYENNE)

No. 2:98-CV-00201-CAB

ROBBINS, PLAINTIFF

v.

BLM, ET AL., DEFENDANT

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
08/12/1998	1	COMPLAINT (summons(es) issued) filing fee paid - $150.00 receipt # 287304 (dn) (Entered: 08/17/1998)
08/12/1998	2	DEMAND for jury trial by plaintiff Harvey Frank Robbins Jr (dn) (Entered: 08/17/1998)
	* * * * *	
10/13/1998	6	MOTION by defendants to dismiss complaint (dktclerk) (Entered: 10/15/1998)

DATE	DOCKET NUMBER	PROCEEDINGS
10/13/1998	7	MEMORANDUM by defendants in support of motion to dismiss complaint [6-1] dkt lerk) (Entered: 10/15/1998)
10/13/1998	8	MOTION by defendant USA to substitute USA for individual federal defendants Wilkie, Vessels, Barnes, Shryack, Merrill, Stimson, Miller and Leone with respect to claims of malicious prosecution, abuse of process and trespass (dktclerk) (Entered: 10/15/1998)
	* * * * *	
11/06/1998	24	MOTION by plaintiff to amend complaint (dn) (Entered: 11/09/1998)
11/06/1998	25	FIRST AMENDED COMPLAINT [1-1] by plaintiff Harvey Frank Robbins Jr (dn) (Entered: 11/09/1998)
	* * * * *	

DATE	DOCKET NUMBER	PROCEEDINGS
11//09/1998	29	OPPOSITION by plaintiff to motion to dismiss complaint [6-1] (dn) (Entered: 11/10/1998)
11/10/1998	30	ORDER by Magistrate Judge William C. Beaman granting motion to amend complaint [24-1] (cc: all counsel 11/10/98) (dn) (Entered: 11/10/1998)
	* * * * *	
11/10/1998	32	REPLY by defendants BLM, DOI, BLM-Employee, BLM-Employee, BLM-Employee, BLM-Employee, BLM-Employee, BLM-Employee, BLM-Employee, USA to plaintiff's opposition to motion to dismiss [29-1] (dn) (Entered: 11/12/1998)
11/10/1998	33	RESPONSE by defendants BLM, DOI, BLM-Employee, BLM-Employee, BLM-Employee, BLM-Employee, BLM-Employee, BLM-Employee, BLM-Employee,

DATE	DOCKET NUMBER	PROCEEDINGS
		BLM-Employee, USA to motion to amend complaint [24-1] (dn) (Entered: 11/12/1998)
		* * * * *
12/10/1998	38	MOTION by defendants to dismiss first amended complaint (dktclerk) (Entered: 12/11/1998)
12/10/1998	39	MEMORANDUM (BRIEF) by defendants in support of motion to dismiss first amended complaint [38-1] (dktclerk) (Entered: 12/11/1998)
12/14/1998	40	MOTION by defendant Gene Leone, BLM-Employee to dismiss as party (dn) (Entered: 12/14/1998)
12/15/1998	41	ORDER by Honorable Clarence A. Brimmer granting motion to dismiss as party [40-1] BLM-Employee, Gene Leone (cc: all counsel & EOD 12/15/98) (dn) (Entered: 12/15/1998)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
01/12/1999	55	OPPOSITION by plaintiff to defendants' second motion to dismiss [38-1] (dktclerk) (Entered: 01/12/1999)
		* * * * *
01/28/1999	58	REPLY by defendants to plaintiff's opposition to defendants' second motion to dismiss [55-1] (dn) (Entered: 01/28/1999)
		* * * * *
08/13/1999	71	ORDER by Honorable Clarence A. Brimmer denying motion to dismiss complaint [6-1] (cc: all counsel 8/13/99) (dn) (Entered: 08/13/1999)
		* * * * *
10/18/1999	75	COURTROOM MINUTE SHEET: motion for expedited consideration of motion to amend complaint and to vacate 10/18/99 hearing [73-1] - granted as to motion to amend

DATE	DOCKET NUMBER	PROCEEDINGS
		and denied as to motion to vacate; motion to amend complaint [72-1] granted; motion to vacate 10/18/99 hearing [72-2] denied; motion to dismiss first amended complaint [38-1] moot ; motion for order to challenge attorney general scope certifications [26-1] moot (Ct Rptr: Robertson) (dn) (Entered: 10/18/1999)
10/18/1999	76	AMENDED COMPLAINT [25-1], [1-1] by Harvey Frank Robbins Jr: terminating defendant BLM, defendant DOI, defendant BLM Employee, defendant BLM Employee, defendant BLM Employee, defendant BLM Employee, defendant BLM BLM Employee, defendant BLM Employee, defendant BLM Employee, defendant BLM Employee, defendant USA; adding Charles Wilkie, Joe Vessels, Darrell Barnes,

DATE	DOCKET NUMBER	PROCEEDINGS
		Teryl Shryack, Patrick Merrill, David Stimson, Michael Miller, Gene Leone (dn) Modified on 7/9/2003 (jlg,) (PARAGRAPHS 112 THROUGH 135 HAVE BEEN STRICKEN PER PLEADING 149). (Entered: 10/18/1999)
10/18/1999	77	ORDER by Honorable Clarence A. Brimmer denying motion to vacate 10/18/99 hearing [72-2], denying motion for expedited consideration of motion to amend complaint and to vacate 10/18/99 hearing [73-1], granting motion to amend complaint [72-1] (cc: all counsel mld 10/19/99) (dktclerk) (Entered: 10/19/1999)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
11/08/1999	80	MOTION by defendants to dismiss second amended complaint (dktclerk) (Entered: 11/08/1999)
		* * * * *
12/09/1999	86	OPPOSITION by plaintiff to motion to dismiss second amended complaint [80-1] (dktclerk) (Entered: 12/09/1999)
12/20/1999	87	REPLY by defendants to plaintiff's opposition to motion to dismiss second amended complaint of plaintiff [86-1] (dktclerk) (Entered: 12/20/1999)
		* * * * *
05/09/2001	98	ORDER by Honorable Clarence A. Brimmer granting motion to dismiss with prejudice second amended complaint [80-1] terminating case (cc: all counsel EOD 5/9/01) (jlg) (Entered: 05/09/2001)

DATE	DOCKET NUMBER	PROCEEDINGS
5/25/2001	99	NOTICE OF APPEAL by plaintiff Harvey Frank Robbins Jr from District Court decision [98-2] Receipt # 294717 (cc: all counsel) (js) (Entered: 05/25/2001)
	* * * * *	
10/17/2002	108	MANDATE from USCA reversing and remanding the decision of the USDC Appeal [99-1] appeal 01-8037 (js) (Entered: 10/17/2002)
	* * * * *	
10/18/2002	110	ORDER ON MANDATE by Honorable Clarence A. Brimmer; it is ordered that this matter be restored to the civil docket for further action Case reopened (cc: all counsel mld 10/18/02) (jlg) (Entered: 10/18/2002)
	* * * * *	

DATE	DOCKET NUMBER	PROCEEDINGS
01/03/2003	122	MOTION by defendants to dismiss second amended complaint (dn) (Entered: 01/03/2003)
01/03/2003	123	MEMORANDUM by defendants in support of motion to dismiss second amended complaint [122-1] (dn) (Entered: 01/03/2003)
	* * * * *	
01/27/2003	127	OPPOSITION by plaintiff to defendants' motion to dismiss second amended complaint [122-1] (dn) (Entered: 01/27/2003)
	* * * * *	
02/13/2003	129	COURTROOM MINUTES: taking under advisement on 2/13/03 the motion to dismiss second amended complaint [122-1] dispositive motion hearing held (Ct Rptr: Dew-Harris) (dn) (Entered: 02/13/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
03/21/2003	130	ORDER by Honorable Clarence A. Brimmer granting in part and denying in part defendants' motion to dismiss second amended complaint [122-1]; motion is denied as to plaintiff's first claim for relief, violation of RICO, and plaintiff's unconstitutional retaliation claim under Bivens; motion is granted as to plaintiff's Bivens claims alleging violation of the Fourth Amendment and violation of procedural and substantive components of the due process clauses of the Fifth and Fourteenth Amendments (cc: all counsel & EOD 3/21/03) (dn) Modified on 03/21/2003 (Entered: 03/21/2003)
04/04/2003		TRANSCRIPT of motion proceedings (motion to dismiss second amended complaint) held on 2/13/03 (dn) (Entered: 04/04/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
05/13/2003		SCHEDULING CONFERENCE held (jg) Modified on 05/16/2003 (Entered: 05/16/2003)
05/21/2003	136	ANSWER with separate affirmative defenses by defendants Charles Wilkie, Joe Vessels, Darrell Barnes, Teryl Shryack, Patrick Merrill, David Stimson, Michael Miller, Gene Leone, BLM to second amended complaint [76-1] (dn) (Entered: 05/22/2003)
05/21/2003	137	MOTION by USA to strike portions of the second amended complaint referred to Magistrate Judge William C. Beaman (dn) (Entered: 05/22/2003)
	* * * * *	
05/30/2003	141	MOTION by defendants Gene Leone, Michael Miller, David Stimson, Patrick Merrill, Teryl Shryack, Darrell Barnes, Joe Vessels, Wilkie for order to require RICO state-

DATE	DOCKET NUMBER	PROCEEDINGS
		ment referred to Magistrate Judge William C. Beaman (dn) (Entered: 05/30/2003)
06/04/2003	142	RESPONSE by plaintiff Harvey Frank Robbins Jr to defendant USA's motion to strike portions of the second amended complaint [137-1] (dn) (Entered: 06/05/2003)
06/11/2003	143	REPLY by defendants to response to motion to strike portions of the second amended complaint [137-1] (jlg) (Entered: 06/11/2003)
06/13/2003	144	RESPONSE by plaintiff to motion for order to require RICO statement [141-1] (jlg) (Entered: 06/13/2003)
06/25/2003	145	NOTICE by USA of death of defendant Joseph T "Joe" Vessels (dn) (Entered: 06/25/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
06/25/2003	146	REPLY by USA to plaintiff's response to motion for order to require RICO statement [144-1] (dn) (Entered: 06/25/2003)
06/26/2003	147	ORDER OF PARTIAL DISMISSAL AND AMENDING CAPTION by Honorable Clarence A. Brimmer; matter is dismissed as to defendant Joseph T Vessels, caption shall be amended to delete Joe Vessels as a defendant individually and as an employee of the BLM terminating party Joe Vessels (cc: all counsel 6/26/03) (dn) (Entered: 06/26/2003)
07/09/2003	148	ORDER by the Honorable William C Beaman granting [141] Motion for Order requiring RICO Statement; it is ordered that plaintiff is required to file a RICO Statement by 7/21/03 (cc: all counsel on 7/9/03). (jlg,) (Entered: 07/09/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
07/09/2003	149	ORDER by the Honorable William C Beaman granting [137] Motion to Strike Portions of the [76] Second Amended Complaint; it is ordered that paragraphs 112 through 135 of the second amended complaint be stricken (cc: all counsel on 7/9/03). (jlg,) (Entered: 07/09/2003)
		* * * * *
07/18/2003	152	NOTICE by Plaintiff Harvey Frank Robbins Jr of Filing RICO Statement (dn,) (Entered: 07/21/2003)
		* * * * *
09/24/2003	160	MOTION AND MEMORANDUM IN SUPPORT for Leave to File Third Amended Complaint by Plaintiff Harvey Frank Robbins Jr (Proposed order submitted) (dn,) (Entered: 09/25/2003)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
10/08/2003	171	RESPONSE to plaintiff's [160] MOTION AND MEMORANDUM IN SUPPORT for Leave to File Third Amended Complaint filed by Defendants Darrell Barnes, Gene Leone, Gene Leone, Patrick Merrill, Michael Miller, Teryl Shryack, David Stimson, Charles Wilkie. (dn,) (Entered: 10/08/2003)
10/10/2003	172	MOTION for Summary Judgment by Defendants Darrell Barnes, Gene Leone, Patrick Merrill, Michael Miller, Teryl Shryack, David Stimson, Charles Wilkie (jlg,) (Entered: 10/10/2003)
10/10/2003	173	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW re [172] MOTION for Summary Judgment filed by Defendants Darrell Barnes, Gene Leone, Patrick Merrill, Michael Miller, Teryl Shryack, David Stimson, Charles

DATE	DOCKET NUMBER	PROCEEDINGS
		Charles Wilkie. (jlg,) (Entered: 10/10/2003)
10/10/2003	174	MEMORANDUM in Support of [172] MOTION for Summary Judgment filed by Defendants Darrell Barnes, Gene Leone, Patrick Merrill, Michael Miller, Teryl Shryack, David Stimson, Charles Wilkie. (dn,) (Entered: 10/14/2003)
		* * * * *
10/16/2003	176	REPLY to Response to [171] RESPONSE to plaintiff's [160] MOTION AND MEMORANDUM IN SUPPORT for Leave to File Third Amended Complaint filed by Defendants Darrell Barnes, Gene Leone, Gene Leone, Patrick Merrill, Michael Miller, Teryl Shryack, David Stimson, Charles Wilkie. (dn,) filed by Plaintiff Harvey Frank Robbins Jr. (sjs,) (Entered: 10/17/2003)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
10/20/2003	180	PROPOSED STIPULATION AS TO FACTS filed by defendants Darrell Barnes, Gene Leone, Patrick Merrill, Michael Miller, Teryl Shryack, David Stimson, Charles Wilkie. (dn,) (Entered: 10/20/2003)
10/20/2003	181	PROPOSED STIPULATION OF FACTS filed by Harvey Frank Robbins Jr. (dn,) (Entered: 10/20/2003)
	* * * * *	
10/27/2003	186	OPPOSITION filed by Plaintiff Harvey Frank Robbins Jr to [172] MOTION for Summary Judgment by Defendants Darrell Barnes, Gene Leone, Patrick Merrill, Michael Miller, Teryl Shryack, David Stimson, Charles Wilkie. (dn,) (Entered: 10/27/2003)
10/27/2003	187	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW re Plaintiff's Oppo-

DATE	DOCKET NUMBER	PROCEEDINGS
		sition to Defendants' Motion for Summary Judgment. (dn,) (Entered: 10/27/2003)
10/27/2003	188	NOTICE of Filing Exhibit Index (with exhibits 1-248) by Plaintiff Harvey Frank Robbins Jr re [186] Opposition to Defendants' Motion for Summary Judgment (dn,) (Entered: 10/27/2003)
		* * * * *
10/31/2003	190	Minutes: Motion Hearing held on 10/31/2003, taking under advisement [172] Motion for Summary Judgment and taking under advisement [177] appeal of Magistrate order. (Court Reporter Jan Dew-Harris.) (he,) (Entered: 10/31/2003)
		* * * * *
10/31/2003	193	MOTION for Reconsideration of Magistrate's [179] Order on Motion for Leave to File Third Amended Complaint by Plaintiff Harvey Frank

DATE	DOCKET NUMBER	PROCEEDINGS
		Robbins Jr; referred to the Honorable William C Beaman. (dn,) (Entered: 10/31/2003)
		* * * * *
11/03/2003	195	ORDER by the Honorable Clarence A Brimmer granting [193] Plaintiff's Motion for Reconsideration of [193] MOTION for Reconsideration re [179] Order on Motion for Leave to File Third Amended Complaint filed by Harvey Frank Robbins (cc: all counsel on 11/3/2003). (dn,) Modified on 11/4/2003 (dn,) (Entered: 11/03/2003)
		* * * * *
11/04/2003	197	THIRD AMENDED COMPLAINT filed by Harvey Frank Robbins Jr against Defendants David Wallace, Darrell Barnes, Gene Leone, Michael Miller, Teryl Shryack and Charles Wilkie. (dn,) (Entered: 11/07/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
11/04/2003	198	NOTICE by Plaintiff Harvey Frank Robbins Jr of Supplemental Documents Supporting Plaintiff's [186] Opposition (Response) to Defendants' Motion for Summary Judgment (documents consist of deposition and trial transcripts; in separate box) (dn,) (Entered: 11/07/2003)
	* * * * *	
11/12/2003	204	PRETRIAL CONFERENCE MEMORANDUM by Plaintiff Harvey Frank Robbins Jr. (sjlg,) (Entered: 11/13/2003)
11/13/2003	205	SECOND SUPPLEMENT re [204] PRETRIAL CONFERENCE MEMORANDUM by Plaintiff Harvey Frank Robbins Jr. (sjlg,) filed by Plaintiff Harvey Frank Robbins Jr. (js,) (Entered: 11/13/2003)
	* * * * *	

DATE	DOCKET NUMBER	PROCEEDINGS
11/12/2003	206	SUPPLEMENT re [204] PRETRIAL CONFERENCE MEMORANDUM filed by Plaintiff Harvey Frank Robbins Jr. (jlg,) (Entered: 11/13/2003)
11/12/2003	207	FINAL PRETRIAL CONFERENCE MEMORANDUM by Defendants Darrell Barnes, Gene Leone, Gene Leone, Michael Miller, Teryl Shryack, Charles Wilkie. (jlg,) (Entered: 11/13/2003)
	* * * * *	
11/17/2006	210	RESPONSE to Motion re [196] MOTION for Reconsideration of re [195] Court's Order on Motion for Reconsideration to file third amended complaint and to strike said complaint, by Defendants Darrell Barnes, Gene Leone, Michael Miller, Teryl Shryack, Charles Wilkie referred to the Honorable William C Beaman. (js,) filed

DATE	DOCKET NUMBER	PROCEEDINGS
		by Plaintiff Harvey Frank Robbins Jr. (js,) (Entered: 11/18/2003)
		* * * * *
12/03/2003	219	ORDER ON VARIOUS MOTIONS by the Honorable Clarence A Brimmer ;denying [196] Motion for Reconsideration of Court's Order Granting Plaintiff Leave to File Third Amended Complaint and to Strike said Complaint and granting [208] Plaintiff's MOTION for Leave to allow filing of additional factual evidence in support of plaintiff's opposition to defendants' motion for summary judgment. Said additional depositions to be filed by 12/15/2003. (cc: all counsel on 12/3/2003). (dn,) (Entered: 12/03/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
12/04/2003	220	SUPPLEMENT re [219] ORDER ON VARIOUS MOTIONS by the Honorable Clarence A Brimmer; denying [196] Motion for Reconsideration of Court's Order Granting Plaintiff Leave to File Third Amended Complaint and to Strike said Complaint and granting [208] Plaintiff's MOTION for Leave to allow filing of additional factual evidence in support of plaintiff's opposition to defendants' motion for summary judgment. Said additional depositions to be filed by 12/15/2003. (cc: all counsel on 12/3/2003). (dn,) (js,) (Entered: 12/04/2003)
		* * * * *
12/11/2003	224	SUPPLEMENT/ADDITIONAL Factual Evidence in support of plaintiff's [186] OPPOSITION to [172] MOTION for Summary Judgment filed by Plaintiff Harvey

DATE	DOCKET NUMBER	PROCEEDINGS
		Frank Robbins Jr. (jlg,) (Entered: 12/15/2003)
		* * * * *
01/20/2004	233	ORDER by the Honorable Clarence A Brimmer denying [172] Motion for Summary Judgment (cc: all counsel 1/20/04).(jlg,) (Entered: 01/21/2004)
		* * * * *
02/10/2004	237	NOTICE OF APPEAL as to 233 Order on Motion for Summary Judgment by Defendants Darrell Barnes, Gene Leone, Gene Leone, Michael Miller, Teryl Shryack, Charles Wilkie. Filing fee waived. (cc: all counsel on 2/11/04).(sjlg,) (Entered: 02/11/2004)
		* * * * *
02/11/2004	239	ORDER STAYING CASE PENDING APPEAL ON QUALIFIED IMMUNITY by the Honorable Clarence A Brimmer re 237 Notice of Appeal filed by Darrell Barnes, Charles Wilkie,

DATE	DOCKET NUMBER	PROCEEDINGS
		Teryl Shryack, Gene Leone, Michael Miller. (cc: all counsel 2/11/2004.) (dn,) (Entered: 02/11/2004)
		* * * * *
03/24/2006	249	MANDATE of USCA affirming decision of USDC 237 Notice of Appeal filed by Darrell Barnes, Charles Wilkie, Teryl Shryack, Gene Leone, Michael Miller. (sjs,) (Entered: 03/24/2006)
		* * * * *
03/27/2006	256	ORDER by the Honorable Clarence A. Brimmer granting 253 Motion to Extend Stay Pending Appeal on Qualified Immunity; case stayed until 6/13/2006. (cc: all counsel 3/27/2006). (sdn,) (Entered: 03/28/2006)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
04/07/2006	258	MOTION by Plaintiff Harvey Frank Robbins, Jr for Reconsideration of 256 Order Extending Stay Pending Appeal on Qualified Immunity. (Attachment #1 - Proposed Order) (sdn,) (Entered: 04/10/2006)
	* * * * *	
04/21/2006	261	ORDER by the Honorable Clarence A. Brimmer denying Plaintiff's 258 Motion for Reconsideration of Order Extending Stay Pending Appeal on Qualified Immunity; and denying plaintiff's motion to set scheduling conference. (cc: all counsel 4/21/2006). (sdn,) (Entered: 04/21/2006)
	* * * * *	
08/14/2006	271	ORDER by the Honorable Clarence A. Brimmer granting 270 Motion to Extend Stay Pending Appeal on Qualified Immunity; stay continued until US Supreme Court decides defendants' petition for

DATE	DOCKET NUMBER	PROCEEDINGS
		writ of certiorari (cc: all counsel on 8/15/2006.) (sdn,) (Entered: 08/15/2006)
		* * * * *
09/25/2006	274	APPEAL ORDER from USCA: Mr. Robbins has "not established that his right to immediately proceed is clear and indisputable." Accordingly his request for mandamus is denied. Appeal number 06-8071. (sjs,) (Entered: 09/25/2006)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. 98-CV-201B

HARVEY FRANK ROBBINS, PLAINTIFFS

v.

CHARLES WILKIE, JOE VESSELS, DARRELL BARNES, TERYL SHRYACK, PATRICK MERRILL, DAVID STIMSON, MICHAEL MILLER, GENE LEONE, AND JOHN DOES 1 THROUGH 20, DEFENDANTS

[May 9, 2001]

ORDER ON MOTION TO DISMISS

This is a cause of action brought as a *Bivens* claim and under the Racketeer Influenced and Corrupt Organizations Act ("RICO") seeking compensatory damages, as well as declaratory and injunctive relief. Now before the Court is Defendants' Motion to Dismiss Second Amended Complaint of Plaintiff, pursuant to Fed. R. Civ. P. 12. After reading the briefs and being fully advised of the premises, the Court FINDS and ORDERS as follows:

Background

Plaintiff Harvey Frank Robbins ("Robbins") is the owner of the High Island Ranch in Hot Springs County Wyoming, and a grazing permittee within the Big Horn Basin Resource Area. Operations at the High Island Ranch involve livestock grazing as well as guest ranch services.

Robbins acknowledges that his predecessor in interest granted the BLM an easement across his land, but contends the Bureau of Land Management ("BLM") failed to record this easement. Robbins has since refused to grant the BLM a similar easement.

Robbins alleges that he was subjected to harassment by BLM employees in an attempt to coerce him into grating the easement in question. According to Robbins, BLM officials threatened to revoke a right-of-way held by Robbins across BLM land unless he granted the easement that BLM wanted. Robbins alleges that Defendants singled him out for discriminatory treatment and harassment in retribution for his refusal to grant an easement. Inter alia, Robbins alleges that the Defendants canceled his right-of-way across BLM land, provoked disputes between Robbins and his neighbors, and suspended Robbins' Special Recreational Use Permit.

On or about July 11, 1997, Defendants Shryack and Merrill attempted to enter a public land area adjacent to Robbins' property via the asserted easement to conduct fence maintenance, where they were confronted by Robbins. Robbins refused them entrance, and tore up the copy of the fence easement Shryack and Merrill had in their possession.

Robbins contends he was subsequently haled into BLM's offices, where he was subjected to an interrogation by Defendants Barnes, Vessels, Stimson and Miller without the benefit of counsel. After further investigation by defendants Stimson and Miller the BLM referred the case to the United States Attorney's Office. Robbins was charged with interfering with a federal officer, and was acquitted following a three day trial.

On November 6, 1998, Plaintiff filed a five count First Amended Complaint. Robbins alleged that the Defendants violated RICO and sought recovery under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), based on BLM's allegedly meritless prosecution of Robbins and the BLM's efforts to pressure him to grant BLM an easement. On October 14, 1999, Robbins filed a notice of voluntary dismissal of some of his claims, and requested leave to file a Second Amended Complaint.

Robbins' Second Amended Complaint does not list BLM, the Department of Interior, or the United States as parties. Instead it lists eight current and former employees of BLM, as well as "John Does 1 through 20."[1] The individual Defendants are sued under RICAO and *Bivens* for declaratory and injunctive relief, as well as compensatory damages.

In their Motion To Dismiss, Defendants assert qualified immunity with regard to both the RICO and *Bivens* claims. Defendants also contend the RICO claims are ripe for dismissal, since they are subject to statutory defenses and fail to state a claim under the RICO guidelines.

Standard of Review

Defendants contend Robbins has not stated a claim for which relief can be granted.

> "Dismissal is inappropriate under Fed. R. Civ. P. 12(b)(6) unless the Plaintiff can prove no set of facts in support of his claims to entitle him to relief. The court must accept as true all the factual allegations in the com-

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[1] Robbins' Amended Complaint does not indicate whether the John Does are sued in their individual or official capacities.

plaint, construe them in a light of most favorable to the Plaintiff, and resolve all reasonable inferences in plaintiff's favor."

Seamons v. *Snow*, 84 F.3d 1226, 1231-32 (10th Cir. 1996)

Analysis

I. Racketeer Influenced and Corrupt Organization Act Claim

Robbins alleges that in their effort to secure an easement through his property, the individual Defendants engaged in a series of acts prohibited under the Racketeer Influenced and Corrupt Organization Act ("RICO"). 118 U.S.C. § 1961, *et seq.* "To survive a Rule 12(b) (6) motion, a civil RICO claim must allege (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity". *Cayman Exploration Corp. v. United Gas Pipe Line Co.*, 873 F.2d 1357, 1362 (10th Cir. 1989) (quotations omitted). Additionally, a plaintiff under RICO must show damage to business or property in order to have standing. *Sedima. S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985). Defendants argue dismissal is proper because Robbins has failed to meet these RICO requirements.

According to Defendants, Robbins has not demonstrated acts on behalf of an "enterprise" as required under the RICO statute. An enterprise includes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961 (4). Robbins contends the BLM is the enterprise intended to benefit from acquisition of the contested easement.

Although no cases address the question of whether federal agencies qualify as enterprises under RICO, a majority of circuits have allowed RICO claims for abusive practices

committed on behalf of state and local governments. *See United States v. Freeman*, 6F.3d 586, 596-97 (9th Cir. 1993), *United States v. Thompson*, 669 F.2d 1143, 1149 (6th Cir. 1982). Using RICO to deter abuse of official right by government actors is consistent with "certain of RICO'S substantive goals, which appear to be directed particularly toward government entities". *United States v. Angelilli*, 660 F.2d 23, 31 (2nd Cir. 1981). Therefore, for the purposes of this Order, the Court concludes the BLM qualifies as an enterprise under RICO. Next, Defendants contend Robbins has failed to allege with sufficient particularity acts of racketeering which constitute a pattern. To establish pattern of activity under RICO, predicate acts must be "related, and . . . amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Northwestern Bell Tele.*, 492 U.S. 229, 239 (1989); *see also Sil-Flo, Inc.* V. *SFHC*, 917 F.2d 1507 (10th Cir. 1990).

Robbins responds that he has pled numerous acts taken by the Defendants ostensibly to acquire the easement. These actions include cancellation of Robbins' Special Recreational Use Permit and a grazing permit, refusal to repair section of an access route owned by BLM, refusal to approve a right-of-way requested by Robbins, threatening to cancel another right-of-way, inciting conflicts between Robbins and his neighbors, and engaging in malicious prosecution of Robbins.

Considering these allegations in the light most favorable to the Plaintiff, Robbins has at least made a facial allegation of a pattern of racketeering, for the purposes of RICO. RICO defines racketeering activity in part as "any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical." 18 U.S.C.

§ 1961(A). Robbins contends that the Defendants' actions constitute attempted violations of the Hobbs Act, 18 U.S.C. § 1951 *et seq.*, and the Wyoming blackmail law, Wyo. Stat. § 6-2-402.

Even assuming this is to be the case, however, Robbins has absolutely failed to carry his burden of pleading any harm to business or property as a result of the alleged RICO violation. See 18 U.S.C. § 1962. Although his concern for the integrity of his property rights is understandable, Robbins has not alleged damages to his business or property with a demonstrable effect on interstate commerce.[2] "The [RTCO] plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation." *Sedima, S.P.R.L.*, 473 U.S. at 496.

Robbins has not, in fact, been forced to forfeit any control to his property, nor has he demonstrated any deleterious effects to his ranching our tourism operations. The decision by the BLM to deny Robbins permits is well within agency discretion, and does not constitute the violation of any property right held by Robbins. *See Pub. Lands Council v. Babbitt*, 529 U.S. 728, 733 (2000). It is also apparent that the Defendants cannot be held liable for any conflicts between Robbins and his neighbors. Robbins' inability allege any tangible harm to his business or property renders his RICO claim nonviable.

The potent remedies available for a civil claim under RICO are available only under certain delineated circumstances. *See* 18 U.S.C. 1962. Mr. Robbins' problems with

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[2] RICO is a constitutional exercise of federal Commerce Clause power only to the extent it regulates activity with an effect on interstate commerce. *United States* v. *Muyet*, 994 F. Supp. 501, 524 (S.D.N.Y. 1998).

employees of the BLM do not rise to such a level. Therefore, Robbins lacks standing to state a claim for which relief may be granted under RICO.

II. *Bivens* Claims

Claims for monetary damages for constitutional violations by federal officers are cognizable based on the Supreme Court's decision in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Robbins alleges the Defendants conspired to deprive him of his constitutional rights through malicious prosecution and abuse of process.

Defendants counter that the Plaintiff is attempting to resurrect what are essentially common law tort claims in a *Bivens* cause of action. To the extent that Robbin's claims are cognizable, the Defendants contend he has other avenues of relief available, and therefore a *Bivens* action must be rejected. *Bivens*, 403 U.S. at 397. "When the design of a Government Program suggests that Congress has provided what it considers adequate remedial mechanisms for the constitutional violations that may occur in the course of it's administration, [federal courts] have not created additional *Bivens* remedies." *Schweiker* v. *Chilicky*, 487 U.S. 412, 423 (1988); *see also Lombardi v. Small Bus. Admin.*, 889 F.2d 959, 961-62 (10th Cir. 1989) ("[W]e are of the opinion that the clear purpose of *Chilicky* and the related cases is to virtually prohibit intrusion by the Courts into the statutory scheme established by Congress.").

Here, in addition to availability of common law tort claims, Robbins may seek relief under the Federal Tort Claims Act, 28 U.S.C. §2671 *et seq.*, or the Administrative Procedure Act, 5 U.S.C. §701 *et seq.* Therefore, the Court finds that availability of these congressionally-created rem-

edies precludes resort to the judicially-created corrective of a *Bivens* action.

III. Qualified Immunity

Because Robbins has not satisfied the requirement for standing under RICO, or made a cognizable claim under *Bivens*, it is unnecessary for the Court to determine formally whether or not the Defendants are protected by qualified immunity. However, the Court is inclines to believe that the Defendants are so protected, is inclined to believe that the Defendants were so protected, because at the time of the events of which Robbins complains, the Defendants, as agents of the BLM, were merely doing their duties as federal officers.

Conclusion

Robbins has not shown an injury to business or property necessary to support standing for a RICO claim. Likewise, the availability of other avenues of relief bars Robbins' *Bivens* action.

THEREFORE, it is hereby ordered that Defendants' Motion to Dismiss Second Amended Complaint of Plaintiff is GRANTED.

Plaintiff's claims are DISMISSED WITH PREJUDICE.

Dated this 9th day of May, 2001.

/s/ CLARENCE A. BRIMMER
CLARENCE A. BRIMMER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

Case No. 98-CV-201-B

HARVEY FRANK ROBBINS, PLAINTIFF

v.

CHARLES WILKIE, DARRELL BARNES, TERYL SHRYACK, MICHAEL MILLER, GENE LEONE, AND DAVID WALLACE, DEFENDANTS

[Filed: Nov. 4, 2003]

THIRD AMENDED COMPLAINT

COMES NOW the Plaintiff, by and through undersigned counsel, and for his causes of action against the Defendants, alleges as follows:

I. PARTIES

1. The Plaintiff Harvey Frank Robbins (hereinafter "Robbins") is a resident of the State and District of Wyoming, residing in Hamilton Dome, Wyoming, in Hot Springs County. Plaintiff is the owner of real property known as the High Island Ranch, HD Ranch, and Owl Creek Ranch.

2. The Defendant Charles Wilkie ("Wilkie") was an employee of the United States Bureau of Land

Management ("BLM") as the Worland area manager. Defendant Wilkie was a BLM line officer. Defendant Wilkie's official duties included implementing the laws of the United States and the Department of the Interior regulations.

3. The Defendant Darrell Barnes is an employee of the United States and the BLM. Defendant Barnes is the Worland BLM District Manager. Defendant Barnes' official duties include implementing the laws of the United States and the Department of the Interior regulations.

4. The Defendant Michael Miller is an employee of the United States and the BLM. Defendant Miller is a BLM investigative and law enforcement officer whose duties include investigating alleged criminal offenses and making recommendations regarding prosecution. Defendant Miller's official duties include implementing the laws of the United States and the Department of the Interior regulations.

5. The Defendant Gene Leone was an employee of the United States and the Worland BLM. During his employment, Defendant Leone's official duties included implementing the laws of the United States and the Department of the Interior regulations.

6. The Defendant Teryl Shryack is an employee of the United States and the Worland BLM. Defendant Shryack's official duties include implementing the laws of the United States and the Department of the Interior regulations.

7. The Defendant David Wallace is an employee of the United States and the Worland BLM. Defendant Wallace's official duties include implementing the laws of the United States and the Department of the Interior regulations.

8. Mr. Joe Vessels ("Vessels") was an employee of the United States and the Worland BLM, as Assistant Area Manager. Mr. Vessels' official duties included implementing the laws of the United States and the Department of the Interior regulations. Mr. Vessels was a primary participant and conspirator involved in the allegations detailed in this complaint, and was listed as a Defendant on Plaintiff Robbins Second Amended Complaint. Mr. Vessels passed away in 2003 and, therefore, is no longer a Defendant in this case.

II. JURISDICTION AND VENUE

9. Jurisdiction is proper in the United States District Court because this action involves claims against officers and agencies of the United States of America under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 28 U.S.C. § l346(b)(l).

10. Jurisdiction is proper in the United States District Court because this action involves claims against individual officers of the United States of America under the case of *Bivens* v. *Six Unnamed Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) which judicially recognizes actions against federal officials which parallel actions under the Civil Rights Act, 42 U.S.C. §1983; 28 U.S.C. § 1331 and under the Constitution of the United States of America.

11. Under 28 U.S.C. § 1391(e), venue is proper in the United States District Court for the District of Wyoming because the Plaintiff and the Defendants reside in the State of Wyoming and the wrongful acts complained of herein took place in the State of Wyoming.

III. FACTS COMMON TO ALL CAUSES OF ACTION

12. On or about the 31st day of May, 1994, Plaintiff Robbins purchased real property in Hot Springs County, Wyoming, known as the High Island Ranch, from George Nelson ("Mr. Nelson").

13. At the time Plaintiff Robbins purchased the High Island Ranch, the Worland office of the BLM was working with the Wyoming Fish and Game Commission and the U.S. Forest Service in an effort to acquire all or part of the High Island Ranch for public access and use.

14. The High Island Ranch operation, stemming from the time of Mr. Nelson's ownership and continuing to the present, involves cattle ranching, and a guest ranch operation whereby the guests participate in the operation of the ranch, including its cattle drives.

15. The property interests of the High Island Ranch acquired by Plaintiff Robbins include a substantial amount of private base property and a number of preference rights for grazing permits issued by the BLM whereby cattle owned or leased by Robbins are licensed to graze on the BLM managed lands.

16. The guest ranch activities of the High Island Ranch acquired by Robbins previously required

and were contemplated by an agreement between the High Island Ranch and the BLM whereby a special recreational use permit ("SRUP") was issued by the BLM. This SRUP allowed Robbins' paying guests to trail livestock on lands managed by the BLM.

17. The business arrangement between the BLM and the High Island Ranch, from the time of Mr. Nelson onward, has been governed by a set of documents known as a Management Plan.

18. On or about April 5, 1994, Mr. Nelson granted a non-exclusive easement to the BLM across the High Island Ranch, on a private road known as the Rock Creek Road.

19. The BLM also granted to Mr. Nelson a right-of-way to maintain a road across BLM managed lands. This road, is the only access route to a substantial parcel of private land belonging to the High Island Ranch. Unless this existing road across the BLM lands is maintained, vehicle access to this private land is not possible.

20. The BLM failed to properly record its easement of April 5 , 1994.

21. When Plaintiff Robbins purchased the High Island Ranch, he was unaware of the BLM easement. Upon acquiring title to the High Island Ranch, Plaintiff Robbins properly recorded his title.

22. The BLM's April 5, 1994 easement was extinguished when Plaintiff Robbins recorded his title to the High Island Ranch.

23. The BLM's easement was extinguished as a result of the Defendants' omissions.

24. In or around June, 1994, upon realizing that the BLM easement had been extinguished, Mr. Vessels contacted Plaintiff Robbins by telephone and demanded that he sign an easement like the one granted to the BLM by Mr. Nelson. Mr. Vessels told Plaintiff Robbins that there would be no negotiation, that Plaintiff Robbins would have to grant the BLM an easement through his property in return for a right-of-way to his property. Mr. Vessels told Plaintiff Robbins that he had no choice, he would have to give the BLM an easement one way or another.

25. In the June 1994 telephone conversation described in the previous paragraph, Mr. Vessels admitted to Plaintiff Robbins that the BLM no longer had an easement for general access across the High Island Ranch's property.

26. Defendants knew that Plaintiff Robbins' guest ranch business could not operate without the ability to maintain the right-of-way across BLM managed lands to access the High Island Ranch private property.

27. Defendants threatened to cancel the right-of-way across BLM managed lands to the High Island Ranch private property, unless Plaintiff Robbins granted an easement across his private lands to the BLM.

28. Defendants' threat to cancel Plaintiff Robbins' right-of-way was reasonably calculated to place Robbins in fear of serious financial loss if he refused to give the BLM an easement.

29. Because he feared retribution from the BLM if he refused to do so, Plaintiff Robbins told Mr. Vessels that he would consider granting an easement to the BLM, and subsequently negotiated such easement in good faith. However, Plaintiff Robbins declined to sign an easement like that signed by Mr. Nelson.

30. Upon realizing that their conduct and omissions had caused the BLM's easement to be extinguished, the Defendants began engaging in a pattern of intentionally abusive conduct for the purpose of coercing Plaintiff Robbins to re-grant the easement and to punish Plaintiff Robbins for not immediately capitulating to their demands.

31. In June of 1994, Mr. Vessels wrote twice to Plaintiff Robbins requesting permission to survey for the proposed easement across the High Island Ranch.

32. Plaintiff Robbins declined to allow the BLM to enter onto his private property for the survey.

33. Mr. Vessels disregarded Plaintiff Robbins' clear instructions and orchestrated a survey anyway. The survey was accomplished without permission and by trespass.

34. Nevertheless, through counsel, Plaintiff Robbins continued to negotiate in good faith with the BLM and Mr. Vessels regarding an easement for the BLM.

35. These negotiations were not fruitful because the BLM and Mr. Vessels insisted that Plaintiff Robbins grant a non-exclusive easement to the BLM, which could be converted to a public easement al-

lowing access across his property by any member of the public. Plaintiff Robbins was unwilling to expose his private property to trespass and vandalism by agreeing to such a non-exclusive easement.

36. On or about February 23, 1995, Mr. Vessels again demanded an easement from Plaintiff Robbins. Mr. Vessels again threatened to terminate Plaintiff Robbins' right-of-way to his property if he did not grant the BLM an easement.

37. Subsequently, Mr. Vessels and the Defendant began to single Plaintiff Robbins out for disparate and discriminatory treatment because he refused to grant the easement that Mr. Vessels demanded.

38. Mr. Vessels and the other Defendants harassed Plaintiff Robbins. For example, a policy was developed whereby the terms and conditions of the Management Plan were not followed in good faith and the BLM would refuse Plaintiff Robbins every reasonable request for flexibility.

39. Additionally, the Defendants prohibited Plaintiff Robbins from maintaining the BLM road which is necessary for Plaintiff Robbins to access a substantial portion of the High Island Ranch.

40. Under Mr. Vessels' direction, the Defendants also began to make trouble for Plaintiff Robbins with his neighbors. On August 31, 1995, Defendant Gene Leone urged Mr. Pennoyer, Mr. Robbins' neighbor and private citizen, to file a criminal complaint with the Sheriff and to have criminal charges filed against Mr. Robbins.

41. On that same date, Defendant Leone provoked a separate incident between Plaintiff Robbins and an elderly neighbor lady named LaVonne Pennoyer, whereby Mrs. Pennoyer was incited to violence against Plaintiff Robbins. Specifically, Mrs. Pennoyer drove a motor vehicle which struck Plaintiff Robbins and the horse on which he was riding.

42. Both of these incidents were intended to support Defendant Leone's statements to fellow BLM employees that he was going to "bury" Plaintiff Robbins and also get Plaintiff Robbins' grazing permits.

43. Subsequently, using the incident that Defendant Leone had provoked with Mrs. Pennoyer as an excuse, Mr. Vessels and Defendants Leone and Barnes suspended Plaintiff Robbins' Special Recreation Use Permit ("SRUP"). Without this SRUP, Plaintiff Robbins could not, at that time, conduct his guest ranch cattle drives which were the primary source of income for the High Island Ranch.

44. The Defendants also embarked upon a pattern of frivolous trespass prosecutions. In these prosecutions, Defendants Shryack, Barnes and Wilkie and Mr. Vessels asserted that Plaintiff Robbins' cattle were in trespass against the BLM, when they were located on Plaintiff Robbins' own private property, under the hypothesis that the High Island Ranch cattle allegedly could "access" the adjoining and unfenced public lands. When the BLM brought these charges, the BLM had no evidence that Mr. Robbins' cattle were in fact on

BLM lands at a time when they were not permitted to be there.

45. Likewise, the Defendants prosecuted Plaintiff Robbins for "willful" livestock grazing trespass, when such trespasses occurred through actions which were admittedly not Plaintiff Robbins' fault. For example, Plaintiff Robbins would be cited for "willful" trespass when a third party broke down a cattle guard, allowing Plaintiff Robbins cattle to escape onto BLM lands. Likewise, Plaintiff Robbins was cited for "willful" trespass when his cattle escaped through a fence intentionally designed by the BLM to allow antelope and other animals to escape, and after the BLM's assurance that incidental trespass related to the fence would not be cited.

46. The Defendants also trespassed Plaintiff Robbins' livestock, but not his neighbors livestock, for the exact same circumstances and sometimes for the exact same incident. Thus the Defendants intentionally treated Plaintiff Robbins differently than other similarly situated permittees: often applying BLM regulations differently to Plaintiff Robbins than they were applied to neighboring permittees.

47. For example, in 1997, the Defendants issued a decision fining Plaintiff Robbins approximately $1,600.00 for repairing a road on BLM lands that washed out. Although Plaintiff Robbins requested, the BLM refused to repair the road even though the BLM knew the road was the only access route to portions of private property belonging to the High Island Ranch. In 1992, Mr. Nel-

son, the prior owner of the High Island Ranch, also repaired this road under similar circumstances, but the BLM did not levy any fines or citations against Mr. Nelson.

48. The Defendants have used these multiple trespass allegations as alleged justification for revoking Plaintiff Robbins' grazing permits, for refusing to transfer Plaintiff Robbins' Owl Creek grazing permit, and for issuing other adverse decisions against Plaintiff Robbins. Mr. Vessels and Defendants Barnes, Wilkie, Shryack and Wallace have willfully and intentionally participated in these schemes, for the purpose of extorting Plaintiff Robbins and punishing Plaintiff Robbins for exercising his private property rights and for failing to capitulate to the Defendants' demands.

49. The Defendants also entered into a scheme to intentionally lie to and mislead Plaintiff Robbins about his legal rights under BLM regulations, and about his legal right to appeal adverse decisions. For example, the Defendants told Plaintiff Robbins that he could not appeal certain adverse decisions, that if he did not settle "willful" trespass allegations he would immediately lose his grazing privileges, that "willful" trespass decisions could not and would not be used against him in the future, and that appealing adverse decisions would be fruitless because appealing would be time consuming, expensive, and because Plaintiff Robbins would be out of business in the mean time. These statements were, as a matter of law, false. The Defendants intentionally and knowingly made these false statements to Plaintiff Robbins in an

effort to convince Plaintiff Robbins not to appeal adverse allegations and decisions, which the Defendants intentionally and knowingly intended to use against Plaintiff Robbins to eventually cancel all of Plaintiff Robbins' grazing privileges. Defendants' scheme to set Plaintiff Robbins up was successful in that the Defendants did indeed use these settled and un-appealed adverse decisions as justification to attempt to cancel all of Plaintiff Robbins' grazing privileges. Defendants Barnes, Wilkie, Shryack, Leone and Mr. Vessels all participated in these schemes.

50. Defendants Leone, Shryack, Barnes, Miller and Mr. Vessels also participated in a scheme to harass Plaintiff Robbins while on cattle drives with paying guests. The Defendants would follow the cattle drives in trucks, photographing and videotaping guests. The above named Defendants also trespassed on Plaintiff Robbins' private property during these incidents.

51. Defendants Barnes and Miller, and Mr. Vessels, also broke into Plaintiff Robbins' guest lodge on Plaintiff Robbins' private property.

52. Defendants orchestrated the improper and abusive conduct described above in an effort to use the sovereign power of the United States to coerce Plaintiff Robbins to grant the nonexclusive easement that they demanded and to punish Plaintiff Robbins for exercising his private property rights. In fact, Ed Parodi, a BLM employee was sent to explain what the BLM would do to Plaintiff Robbins if he did not acquiesce to their demands. The BLM employee stated "if you keep butting heads,

things are going to get pretty ugly" and "they have more resources, more time and money than you. If you keep butting heads with them it will come to war." The same BLM employee stated to Plaintiff Robbins that the employee was sick of doing the BLM's dirty work, and that the BLM was going to give Plaintiff Robbins a "hardball education."

53. Plaintiff Robbins at all times relevant hereto had been willing to grant the BLM permission to cross his lands for legitimate, stated purposes.

54. At all times relevant hereto, the BLM had a recorded fence maintenance easement (the "Fence Easement"), allowing the BLM to use the Rock Creek Road for access to a 276-foot strip of fencing on a remote comer of a parcel owned by Plaintiff Robbins.

55. The Fence Easement provided the BLM access across the Rock Creek Road on the High, Island Ranch for the limited purpose of maintaining and repairing the 276 feet of fence.

56. Tile Fence Easement does not grant the BLM the right to enter onto portions of the High Island Ranch outside of the Rock Creek Road.

57. The Fence Easement does not provide the BLM a general right of access across the Rock Creek Road on the High Island Ranch for any purpose other than maintenance of the 276 foot fence.

58. On various occasions, Plaintiff Robbins granted Defendants limited permission to enter onto Plaintiffs private property at specific times, to go directly to stated places for stated purposes.

59. At no time did Plaintiff Robbins grant Defendants unlimited access to Plaintiff Robbins' private property.

60. Certain of the aforementioned trespass notices against Plaintiff Robbins were issued on dates and at times on which Plaintiff Robbins had given permission to the BLM for entry onto his land at stated places and for stated purposes.

61. In each case, the location of trespass "investigation" was outside the scope of the permitted access. By traversing portions of Plaintiff Robbins' private land where they were not permitted, for the purpose of investigating the alleged trespass, Defendants trespassed on Plaintiff's private lands.

62. On or about June 26, 1997, Defendant Shryack went onto Plaintiff Robbins' private land with a copy of the Fence Easement in her possession and trespassed outside of the Rock Creek Road for purposes other than repair and maintenance of the 276 feet of fence. Defendant Shryack did not encounter Plaintiff Robbins on this date.

63. As a result of the BLM's pattern of abuse, retaliation and other efforts to coerce Plaintiff Robbins to grant a non-exclusive easement across his private property, including the unfounded trespass prosecutions and the abuse of permission to enter his lands, on or about the 7th day of July, 1997, Plaintiff Robbins informed the BLM, in writing, that its employees could no longer enter onto his land without written permission.

64. The Defendants were angered further by Plaintiff Robbins' assertion and exercise of his private

property rights. Accordingly, the decision was made that the Defendants would attempt to utilize the Fence Easement to fraudulently obtain access onto Plaintiff Robbins' lands.

65. On or about the 11th day of July, 1997, Plaintiff Robbins encountered Defendant Shryack traveling in a pickup truck on the Rock Creek Road, on propeny bordering the High Island Ranch.

66. Defendant Shryack's destination was an area of BLM property which could only be accessed by trespassing on Plaintiff Robbins' private property.

67. Plaintiff Robbins told Defendant Shryack that she did not have permission to trespass on Plaintiff Robbins' private property.

68. In response, Defendant Shryack produced a copy of the Fence Easement and stated that the Easement gave the BLM a general right to enter onto Plaintiff Robbins' private property without permission.

69. The Fence Easement did not give the Defendants permission to access Plaintiff Robbins' property to go to the place, or for the purpose, Defendant Shryack was going to go onto Plaintiff Robbins' property.

70. Defendant Shryack knew or should have known that the Fence Easement did not grant her or other BLM employees the rights of access that she represented to Plaintiff Robbins.

71. Defendant Shryack knowingly misrepresented the scope of the Fence Easement to Plaintiff Robbins. On July 11, 1997, Plaintiff Robbins tore up the

copy of the Fence Easement and told Defendant Shryack to turn around and leave.

72. Without any protest or dispute and without attempting to do otherwise, Defendant Shryack turned around and left.

73. At no time during the July 11, 1997 encountered did Plaintiff Robbins assault, apply force to, or threaten Defendant Shryack with harm. In fact, Defendant Shryack stated that Plaintiff Robbins did not assault her or threaten to assault her.

74. Subsequently, on or about July 21, 1997, Defendant Barnes and Mr. Vessels asked Plaintiff Robbins to come to their office allegedly to discuss management of his grazing allotment.

75. A concealed purpose for Defendant Barnes and Mr. Vessels arranging a meeting with Plaintiff Robbins was to subject hm to a surprise interrogation by Defendant Miller.

76. Defendant Miller, without offering Plaintiff Robbins the opportunity to request the presence of legal counsel, interrogated Plaintiff Robbins after he met with Defendants Barnes and Mr. Vessels.

77. On various occasions since Plaintiff Robbins acquired the High Island Ranch, Defendants have used the Rock Creek Road for purposes outside the scope of the Fence Easement and have entered onto portions of Plaintiff Robbins' private property where they had no legal right to be.

78. Based upon this investigation, the United States charged Plaintiff Robbins with a crime. A jury acquitted Plaintiff Robbins of any wrongdoing after approximately 20 minutes of deliberation.

79. From 1995 to 2002, the Defendants levied dozens of adverse allegations and decisions against Plaintiff Robbins. The intended purpose of these adverse decisions was to extort an easement from Plaintiff Robbins, and to punish Plaintiff Robbins for exercising his private property rights and for failing to capitulate to the Defendants' demands. These adverse decisions where eventually used by the Defendants as justification to cancel all of Plaintiff Robbins' gazing privileges. In 1999, the Defendants canceled Plaintiff Robbins' High Island grazing permit. In 2000, the Defendants refused to transfer Plaintiff Robbins' Owl Creek grazing permit from the prior owning to Plaintiff Robbins. In 2002, the Defendants cancelled, in part, Plaintiff Robbins' HD grazing permit.

80. In 2002, Plaintiff Robbins entered into good faith negotiations with the U.S. Department of the Interior regarding all of these adverse decisions. In fact, the Department of the Interior essentially took away the responsibility for participating in these negotiations from the Defendants, especially Defendant Barnes, and negotiated with Plaintiff Robbins despite the protests of the Defendants. Plaintiff Robbins complained to the Department of the Interior that the Defendants had treated lim unfairly and illegally, and that the adverse decisions levied against him were frivolous. Plaintiff Robbins continued these negotiations until 2003, whereupon he entered into a settlement agreement with the Department of the Interior. The settlement agreement stayed all of the adverse decisions levied against Plaintiff Robbins, provided for oversight of the Defendants and the

Worland BLM regarding any future allegations of wrongdoing, and required the Defendants to consult and coordinate with Plaintiff Robbins regarding any such allegations. The settlement agreement states that all adverse decisions against Plaintiff Robbins will be dismissed after an approximate two year period, provided there is no proof of wrongdoing by Plaintiff Robbins during that time period.

81. In 2002, Defendants Barnes, Shryack, and Wallace actively lobbied against and attempted to derail Plaintiff Robbins ongoing settlement negotiations. Early in 2002, these Defendants levied multiple trespass allegations against Plaintiff Robbins. Shortly thereafter, the Department of the Interior began oversight of the Defendants' activities, instructing the Defendants to cease issuance of adverse decisions against Plaintiff Robbins. The Defendants nonetheless continued to levy allegations of wrongdoing against Plaintiff Robbins and take other actions, in an attempt to derail the settlement negotiations. For example, during the summer of 2002, Defendants Shryack and Wallace spent time riding in an aircraft over Plaintiff Robbins' ranch with the express intent and purpose to find livestock in trespass or to find any other alleged wrongdoing by Plaintiff Robbins. Throughout this period of time, the Defendants continually lobbied the Department of the Interior with unsubstantiated allegations of wrongdoing by Plaintiff Robbins. These actions are part of the Defendants' ongoing efforts to extort and punish Plaintiff Robbins.

82. In early 2003, the settlement between Plaintiff Robbins and the Department of the Interior was signed.

83. Defendants Barnes, Shryack and Wallace continued to levy frivolous allegations of wrongdoing against Plaintiff Robbins in an attempt to undo the settlement agreement. These efforts are ongoing.

84. Defendants Barnes and Wallace attempted to interfere with the settlement agreement by actively lobbying and assisting environmental groups in suing the Department of the Interior over the settlement agreement. Prior to the settlement agreement, environmental groups had never expressed a written interest in Plaintiff Robbins' grazing allotments. Immediately after the settlement agreement was signed, at least four environmental groups have expressed an interest in seeing the settlement agreement revoked. At least one of these groups has filed a notice of intent to sue the Department of the Interior regarding the settlement agreement. Defendants Barnes and Wallace have actively encouraged, lobbied and aided these environmental groups in their opposition to the settlement agreement and Plaintiff Robbins.

85. Defendants Barnes and Wallace also have attempted to interfere with the settlement agreement by making false statements to the press. For example, Defendant Wallace has, on several occasions, been quoted in various newspaper articles that Plaintiff Robbins is in violation of the terms of his settlement agreement. The Defendant has intentionally made these false statements in an effort to gamer public support against the

settlement agreement and to personally liable and slander Plaintiff Robbins. Upon information and belief, these efforts are ongoing.

86. Defendants Leone and Wilkie have retired from the BLM and, as such, are no longer directly involved in issuing adverse decisions against Plaintiff Robbins. Nonetheless, they continue to be involved in schemes to punish and extort Plaintiff Robbins. For instance, after the settlement agreement was signed, Defendant Leone contacted the organization known as "Public Employees for Environmental Responsibility" ("PEER"). According to PEER, PEER provides legal representation to public employees who are PEER members, who are attempting to protect the environment through "anonymous activism." Despite the fact that Defendant Leone claims that he is not a member of PEER, is no longer a public employee, and claims to have nothing, to do with environmental activism, Defendant Leone actively lobbied PEER attorneys to sue Plaintiff Robbins personally for "malicious prosecution."

87. Defendant Leone then contacted Defendants Shryack, Barnes and Wilkie, encouraging them to participate in this latest scheme against Plaintiff Robbins. Defendants Barnes and Wilkie encouraged Defendant Leone's efforts and said that they would participate in any such lawsuit. Defendant Shryack not only encouraged Defendant Leone's efforts, but actively participated in them, contacting a PEER attorney at least three times, and encouraging him to sue Plaintiff Robbins for "harassment." Like Defendant Leone, Defendant

Shryack claims to not be a PEER member or in any way interested in "anonymous" environmental activism.

88. The PEER scheme has apparently worked. While PEER has not yet sued Plaintiff Robbins personally, PEER has lodged a formal complaint with the Office of Inspector General, alleging that the settlement agreement is illegal and should be revoked.

89. Defendant Wallace has now become involved in the PEER scheme, spending at least an entire day speaking with an investigator from the Office of Inspector General.

90. In summary, the Defendants have now spent nearly nine years involved in various threats and schemes against Plaintiff Robbins. These efforts have cost Plaintiff Robbins millions of dollars in damages, have jeopardized Plaintiff Robbins livelihood, and have caused an enormous amount of stress and to Plaintiff Robbins and his family. The Defendants' efforts have been and continue to be intentionally designed to extort Plaintiff Robbins and to punish Plaintiff Robbins for failing to capitulate to the demands of the Defendants.

IV. CLAIMS FOR RELIEF

Count One: Violation of the Racketeer Influenced And Corrupt Organization Act, 18 U.S.C. §§ 1961 through 1968

91. Plaintiff realleges each and every allegation of paragraphs 1 through 90 above, and incorporates the same as if set fully set forth, and for a cause of action against the Defendants, alleges as follows:

92. Under the Racketeer Influenced and Corrupt Organization ("RICO") Act, 18 U.S.C. §§ 1961 through 1968, it is unlawful for "any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly in the conduct of such enterprise's affairs through a pattern of racketeering activity. . . ." 18 U.S.C. §1962(c).

93. "Racketeering activity" includes "any act or threat involving . . . extortion . . . which is chargeable under State law and punishable by imprisonment for more than one year." 18 U.S.C. § 1961(1)(A) 94. "Racketeering activity" also includes "any act which is indictable under . . . [28 U.S.C.] section 1951 (relating to interference with commerce, robbery, or extortion) . . . ." 18 U.S.C. § 1961(b).

95. "Pattern of racketeering activity" means "at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity. 18 U.S.C. § 1961(b).

96. Title 18 U.S.C. § 1951, states, "Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce by . . . extortion or attempts or conspires to do so . . . shall be fined not more than $10,000 or imprisoned not more than twenty years, or both."

97. Under U.S.C. § 1951, "'extortion' means the obtaining of property from another, with his consent, induced by . . . color of official right."

98. Under Wyoming State law, "[conduct denoted blackmail . . . constitutes a single offense embracing the separate crimes formerly known as blackmail and extortion." Wyo. Stat. § 6-2-402(e).

99. Under Wyoming State law, "[a] person commits blackmail if' with the intent to obtain property of another or to compel action or inaction by any person against his will, the person . . . accuses or threatens to accuse a person of a crime or immoral conduct which would tend to degrade or disgrace the person or subject him to the ridicule or contempt of society." Wyo. Stat. § 6-2-402(a).

100. Under Wyoming State law, the crime of blackmail/extortion is a "felony punishable by imprisonment for not more than ten (10) years." Wyo. Stat. §6-2-402(b).

101. The High Island Ranch is a guest ranch which draws customers from both inside and outside of the State of Wyoming.

102. The High Island Ranch and the BLM engage in interstate commerce.

103. The BLM forfeited the easement that George Nelson granted to it on or about April 5, 1994 by failing to record it before Plaintiff Robbins purchased the High Island Ranch and recorded his title.

104. The failure to record that easement prior to Plaintiff Robbins' purchase means Defendants had no legal right to an easement across Mr. Robbins' private property.

105. Defendants had no legal right to demand that Plaintiff Robbins grant the BLM an easement

across his private property in return for access to his private property.

106. The BLM had no legal authority to condition approval of the transfer of Plaintiff Robbins' right-of-way on Mr. Robbins' grant of an easement to the BLM.

107. Defendants Wilkie, Barnes, Leone, Shryack, Miller and Wallace each engaged in a conspiracy to commit and/or committed two or more acts of attempted extortion under color of official right, attempted extortion by the wrongful use of fear under 18 U.S.C. 1951, and/or extortion under Wyo. Stat. § 6-2-402; and an abuse of executive discretion. Specifically, the Defendants committed the acts set forth in the partial list below, each of which interfered with Plaintiff Robbins' guest ranch and livestock business which engages in interstate commerce:

    a. The Defendants refused to maintain the road necessary for Plaintiff Robbins' to access his private property in effort to coerce Mr. Robbins to grant the BLM an easement across his private property. This constituted extortion under color of official right and by wrongful use of fear of economic harm.

    b. On numerous occasions, Defendants Barnes, and Wilkie illegally threatened to cancel a right-of-way that Plaintiff Robbins acquired with his purchase of the Ranch unless Plaintiff Robbins granted the BLM an easement.

    c. Coupled with the Defendants' refusal to keep the subject road passable, these threats were

threats to deny Plaintiff Robbins access to his private property.

d. These threats were made for the purpose of causing Plaintiff Robbins to fear economic loss to his guest ranch business and to let Plaintiff Robbins know that the Defendants would cause financial harm if he did not grant the BLM an easement.

e. Each threat to cancel or deny Plaintiff Robbins his right-of-way was an attempt to extort an easement from Plaintiff Robbins through the wrongful use of fear and under color of official right. The threats occurred on at least the following occasions:

   i. In June, 1994, Mr. Vessels threatened to terminate the right-of-way across public lands that Plaintiff Robbins acquired with his purchase of the Ranch unless he granted the BLM an easement. During this conversation, Mr. Vessels told Plaintiff Robbins that he had to give the BLM an easement, one way or another, and that he had no choice.

   ii. On or about February 23, 1995, Mr. Vessels stated that he was going to condition Plaintiff Robbins' continued use of the right-of-way on Plaintiff Robbins' grant of an easement to the BLM.

   iii. On or about April 20, 1995, Defendant Wilkie wrote to Plaintiff Robbins and threatened not to approve George Nel-

son's assignment of the right-of-way to Plaintiff Robbins unless Plaintiff Robbins granted the BLM an easement. Defendant Wilkie further threatened to cancel the right-of-way and deny all but "casual" access to Plaintiff Robbins' property if he refused to gant the easement.

iv. On or about June 6, 1996, Defendant Wilkie wrote to Plaintiff Robbins and threatened to cancel the right-of-way unless Plaintiff Robbins granted the BLM an easement across his private property.

f. On or about July 21, 1995, Defendant Wilkie actually cancelled Plaintiff Robbins' right-of-way in order to coerce him to grant the BLM an easement. This act constituted attempted extortion under color of official right.

g. In or around the summer of 1994, Mr. Vessels demanded permission to survey for an easement on Plaintiff Robbins' private property. Plaintiff Robbins stated that he was not going to grant the easement and denied permission for the trespass and survey. To demonstrate that he could force Plaintiff Robbins to grant the BLM an easement one way or another, and to intimidate Plaintiff Robbins into granting the easement, Mr. Vessels trespassed, or caused others to trespass and conduct the survey on Plaintiff Robbins' property. This

act was an attempt to extort under color of office.

h. Because Plaintiff Robbins refused to grant the BLM an easement, Defendant Leone stated to fellow BLM employees that he was going to "bury Frank Robbins."

i. In or around May, 1996, Ed Parodi, at the time a BLM employee, was sent by Mr. Vessels to Plaintiff Robbins' house to tell him to start doing what BLM employees wanted or that Plaintiff Robbins would suffer retribution.

j. At the May, 1996 meeting, Ed Parodi reported Defendant Leone's statement, that he was going to "bury Frank Robbins," to Plaintiff Robbins.

k. At the May, 1996 meeting, Mr. Parodi admitted that the BLM was causing Plaintiff Robbins trouble because he had refused to give the BLM an easement.

l. The Defendants began improperly trying to cause and/or conspiring to cause disputes between Mr. Robbins and his neighbors in an effort to coerce him to grant the BLM an easement. Specifically, on or about August 31, 1995, Defendant Leone provoked Mrs. Pennoyer into a vehicular battery against Plaintiff Robbins to show Plaintiff Robbins that the Defendants were going to "bury" him if he did not give the BLM an easement. This act was an attempt to extort under color of office.

m. On or about August 31,1995, Defendant Leone contacted Mr. Pennoyer and encouraged him to file a written complaint against Plaintiff Robbins with the BLM to show Plaintiff Robbins that the BLM employees were going to "bury" him if he did not give the BLM an easement. Defendant Leone had also engaged in similar conduct on at least one prior occasion. These acts were an attempt to extort under color of office and an attempt to extort by the wrongful use of fear.

n. On or about August 31, 1995, Defendant Leone contacted Mr. Pennoyer and encouraged him to contact the sheriff and file a criminal action against Plaintiff Robbins to show Plaintiff Robbins that the BLM employees were going to "bury" him if he did not give the BLM an easement. This act was an attempt to extort under color of office and an attempt to extort by the wrongful use of fear. This action also constituted an abuse of process by Defendant Leone because he was trying to cause a criminal prosecution against Plaintiff Robbins for the purpose of coercing Plaintiff Robbins to give the BLM an easement.

o. Following the incident with Mrs. Pennoyer, the Defendants used the incident that Defendant Leone had provoked as an excuse to cancel Plaintiff Robbins' SRUP to further coerce him to give the BLM an easement. This act was an attempt to extort under color of office.

p. On or about July 21, 1997 and on occasions thereafter, the Defendants falsely conspired

to and accused Plaintiff Robbins of a federal crime for the purpose of coercing him to grant the BLM an easement. This was attempted extortion by wrongful use of fear, attempted extortion under color of office, and a violation of Wyoming's extortion statute.

q. On or about July 21, 1997, Defendant Barnes made clear to Plaintiff Robbins that the purpose for the criminal charge was to coerce him to grant the easement when, immediately before subjecting Plaintiff Robbins to the surprise interrogation by Defendant Miller, Defendant Barnes told Plaintiff Robbins that if he would sign the easement all of his troubles would go away. Defendant Barnes' statement was, in and of itself, an act of attempted extortion under color of office.

r. Defendant Wilkie and Mr. Vessels were present when Defendant Barnes made the statement that all of Plaintiff Robbins' troubles would go away if he granted the BLM an easement and they endorsed and thereby conspired with Defendant Barnes to attempt to extort under color of official right and by wrongful use of fear an easement through this statement.

s. On or about July 21, 1997, Defendant Miller threatened to accuse Plaintiff Robbins of criminal actions for the purpose of coercing him to grant the BLM an easement. This act was an attempt to extort under color of office and an attempt to extort by wrongful use of

fear. This act also constituted a violation of Wyo. Stat. § 6-2-302(a).

t. On or about July 31, 1997 and thereafter Defendant Miller accused Plaintiff Robbins of criminal actions for the purpose of coercing him to grant the BLM an easement. The crime the Defendants falsely accused Plaintiff Robbins of committing, forcibly interfering with a federal officer: was punishable by imprisonment and fines up to $100,000 and tended to degrade and disgrace Plaintiff Robbins and subjected him to the ridicule and contempt of society. This act was an attempt to extort under color of office an attempt to extort by the wrongful use of fear. This act also constituted a violation of Wyo. Stat. § 6-2-402(a).

u. Defendants Barnes, Wilkie, and Shryack conceived of a plan and conspired with each other and Defendant Miller and did threaten to accuse Plaintiff Robbins of a criminal violation for the purpose of coercing him to grant the BLM an easement. These acts were an attempt to extort under color of office and an attempt to extort by the wrongful use of fear. These acts also constituted a violation of Wyo. Stat. § 6-2-402(a).

v. Defendants Barnes, Wilkie, and Shryack conceived of a plan, and conspired with each other and Defendant Miller to, and did falsely accuse Plaintiff Robbins of a criminal violation for the purpose of coercing him to grant the BLM an easement.

w. Defendants Barnes, Wilkie, and Shryack conceived of the plan, and conspired with each other and Defendant Miller to, and caused Plaintiff Robbins to be prosecuted for a criminal violation without probable cause for the purpose of coercing him to grant the BLM an easement. These acts were attempts to extort under color of office and an attempt to extort by the wrongful use of fear. These acts also constituted violations of Wyo. Stat. § 6-2-402(a).

x. Defendants Barnes, Wilkie, Shryack and Miller caused, and conspired with each other to cause frivolous criminal charges to be filed against Plaintiff Robbins on or about August 15, 1997 in order to coerce him to grant the BLM an easement. This constituted attempted extortion by wrongful use of fear, attempted extortion under color of office, and a violation of Wyo. Stat. § 6-2-402(a).

y. Defendants attempted to coerce Plaintiff Robbins to grant the BLM an easement by interfering with Plaintiff Robbins' guest ranch operation.

    i. Specifically, Defendants Leone, Barnes, Shryack and Miller began intimidating Plaintiff Robbins' guests by following the guest cattle drives in a BLM vehicle. These actions were calculated to cause Plaintiff Robbins to fear economic loss and to adversely affect his business. These acts were attempts to extort under

color of office and attempts to extort by wrongful use of fear.

ii. The Defendants, including Defendant Shryack, attempted to coerce Plaintiff Robbins to grant the BLM an easement through intimidation by trespassing on his private property, causing resource damage and interfering with his guest ranch operations to force Plaintiff Robbins to grant the BLM easement. These acts were attempts to extort under color of office, and attempts to extort by the wrongful use of fear.

z. On a number of occasions. the Defendants, including Defendants Barnes, Shryack and Miller, actually trespassed on Plaintiff Robbins' private property in order to look for evidence that might support grazing trespass citations against Plaintiff Robbins. These trespasses were part of Defendants' scheme and conspiracy to "bury" Plaintiff Robbins until he granted the BLM an easement. These acts were attempts to extort under color of office and by the wrongful use of fear.

aa. The Defendants instigated a pattern of disparate enforcement of trespass regulations against Plaintiff Robbins in an effort to convince Plaintiff Robbins that they would "bury him" if he did not grant the BLM the easement. The Defendants accused Plaintiff Robbins of trespass no less than eight times between April 18, 1996 and July 3, 1996, and have made similar allegations numerous times

since then. These acts were attempts to extort under color of office.

bb. The Defendants have continued its pattern of disparate enforcement of trespass regulations for the purpose of coercing Plaintiff Robbins to gant the BLM an easement. These acts were attempts to extort under color of office.

cc. The Defendants falsely accused Plaintiff Robbins of trespass on at least two occasions for the purpose of coercing him to gant the BLM an easement.

i. On or about November 19, 1996, the BLM falsely accused Plaintiff Robbins of trespass. The BLM later withdrew this accusation.

ii. Mr. Vessels and Defendant Wilkie falsely charged Plaintiff Robbins with trespass when his livestock were on his private ground on four separate occasions between November 18, 1997 and November 24, 1997. During these times, the BLM had no evidence that the livestock had been trespassing on BLM lands. This was an attempt to extort under color of office.

dd. On or about November 6, 1995, the BLM employees revoked Plaintiff Robbins' SRUP to force Plaintiff Robbins to give the BLM an easement. This action was an attempt to extort under color of official right.

ee. On or about July 21, 1995, the BLM employees, specifically Mr. Vessels and Defendants

Wilkie and Barnes, illegally denied and threatened to continue denying Plaintiff Robbins' reasonable access to his private property for the purpose of forcing him to give the BLM an easement.

ff. As a part of their ongoing effort to force Plaintiff Robbins to grant the BLM an easement by denying him reasonable access to his private property, the Defendants filed a trespass action against Plaintiff Robbins alleging that he had repaired a road that was crucial for access to his private property. This constituted attempted extortion under color of official right.

gg. As a part of their ongoing effort to force Plaintiff Robbins to grant the BLM an easement by denying him reasonable access to his private property, Defendant Barnes cancelled Frank Robbins' SRUP, and livestock permit which represents his guest ranch and livestock activities.

hh. As part of their ongoing effort to force Plaintiff Robbins to grant the BLM an easement and to punish Plaintiff Robbins for failing to capitulate to their demands, Defendants Barnes, Shryack, Wallace, and Wilkie used the aforementioned frivolous allegations and decisions to take away Plaintiff Robbins' grazing privileges for the High Island, HD and Owl Creek ranches.

ii. As part of their ongoing effort to force Plaintiff Robbins to grant the BLM an easement and to punish Plaintiff Robbins for failing to

capitulate to their demands, Defendants Barnes, Shryack, Wallace, Leone and Wilkie have attempted to have Plaintiff Robbins' settlement agreement revoked by bringing false accusations before the Department of the Interior, soliciting the help of various environmental anti-grazing organizations, and by publishing false statements to the press.

108. The foregoing acts demonstrate an ongoing abuse of executive discretion. Defendants Wilkie, Barnes, Leone: Shack, Miller and Wallace attempted to obtain an easement across Plaintiff Robbins' private property, to which the BLM was not entitled, through numerous acts of attempted extortion under color of official right, attempted extortion by the wrongful use of fear, and extortion as prohibited by Wyo. Stat. § 6-2-402(a).

109. These extortionate acts were related in purpose, methods and participants.

110. The extortionate acts continued over a period of years following Plaintiff Robbins' acquisition of the High Island Ranch in 1994 and continue to this day.

111. The Defendants each conspired to commit and committed two or more acts of attempted extortion under color of official right, attempted extortion by the wrongful use of force, and extortion as prohibited by Wyoming law, that were related in purpose, method, and participants and which continued over a period of years. This constitutes a pattern of racketeering activity, and an abuse of executive discretion.

112. Defendants Barnes and Wilkie and Mr. Vessels implicitly threatened that Plaintiff Robbins' "troubles" with the BLM would not go away until he granted the BLM an easement.

113. Defendant Leone's threat that he was going to "bury Frank Robbins" demonstrates that the Defendants do not intend to cease their assault on Plaintiff Robbins. Thus, there is a clear threat that the pattern of racketeering activity will continue.

114. All of the above actions were taken as part of an ongoing scheme to coerce Plaintiff Robbins to grant the BLM an easement, to which it had no right.

115. An easement is an ownership interest in real property.

116. Defendants engaged in numerous acts to obtain an easement across the High Island Ranch's private property under color of official office. Each act constituted an act of extortion and, consequently, a "racketeering activity."

117. Defendants Wilkie, Barnes, Leone, Shryack, Miller and Wallace were employed by and participated in the activities of the BLM.

118. The United States Bureau of Land Management is an enterprise within the meaning of the Racketeering Influenced and corrupt Organizations statute.

119. Defendants Wilkie, Barnes, Leone, Shryack, Miller and Wallace were otherwise associated and constituted an enterprise within the meaning of 18 U.S.C. § 1962(c).

120. Each Defendant conspired to, and conducted and participated, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activities as described above.

121. Defendants' conduct directly and proximately caused Plaintiff Robbins and his family grievous economic and emotional injury, fear of economic harm, and was the direct and proximate cause of severe injury to Plaintiff Robbins' personal and business reputation.

122. Defendants' conduct directly and proximately interfered with the High Island Ranch's guest ranching and cattle business which engages in interstate commerce.

123. Defendants' effort to punish, coerce and to force Plaintiff Robbins to capitulate to their demands continues.

124. Specifically, during the summer of 1999, Plaintiff Robbins approached Mr. Baker who was videotaping Plaintiff Robbins and his guests.

125. Mr. Baker is a BLM official under the Defendants' authority and control.

126. Plaintiff Robbins and Mr. Baker engaged in a conversation regarding the past abuses by the BLM against Plaintiff Robbins.

127. Baker accused Plaintiff Robbins of violating some law but refused to identify what Plaintiff Robbins was doing wrong.

128. Mr. Baker stated that it would be nice if the BLM had public access through Plaintiff Robbins' private lands. This demonstrates that the Defendants

have made it clear to new members of their staff that public access across Plaintiff Robbins' private lands is vitally important to their efforts to force Plaintiff Robbins to capitulate to their demands. This admission demonstrates an ongoing pattern of racketeering, extortion and abuse of executive discretion.

129. The Defendants' actions have caused Plaintiff Robbins to fear retribution and the loss of his livelihood if he exercises his private property rights. This demonstrates a pattern of "racketeering," intimidation and abuse of executive discretion.

130. Defendants' conduct was in willful disregard for Plaintiff Robbins' property rights and has directly caused damages within the jurisdictional limits of this Court in an amount to be further proved at trial. Defendants' conduct justifies an award of treble damages, punitive damages and attorneys' fees and costs.

Count Two: Violation of Civil Rights under Bivens v. Six Unnamed Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971)

131. Plaintiff realleges each and every allegation of paragraphs 1 through 130 above, and specifically incorporates the same as if fully set forth, and for a cause of action against the Defendants, alleges as follows:

132. The Fifth Amendment to the Constitution "protects the right to exclude others from private property." *Robbins v. BLM*, 252 F.Supp.2d 1286, 1301 (D.WY 2003).

133. An "act taken in retaliation for the exercise of a constitutionally protected right is actionable under § 1983, and hence in a *Bivens* action." *Id.*

134. Plaintiff Robbins exercised his constitutional right to exclude others from his private property when he refused to grant the Defendants an easement for nothing, and refused to allow the Defendants *carte blanche* authority to access his private property.

135. The Defendants have engaged in multiple acts, under color of authority, designed to threaten, harm: extort and punish Plaintiff Robbins for failing to grant the Defendants an easement, failing to grant the Defendants access to his private property, and failing to capitulate to the Defendants' demands. These acts were committed by the Defendants with the intent, not only to extort Plaintiff Robbins, but also to punish and retaliate against Plaintiff Robbins for exercising his private property rights. In so doing, the Defendants violated Plaintiff Robbins' right to exercise his constitutional property rights free from retaliation therefrom.

136. Defendants' conduct was the direct and proximate cause of grievous economic and emotional injury to Plaintiff Robbins and was the direct and proximate cause of injury to Plaintiff Robbins' personal and business reputation.

137. As a result of Defendants' conduct described above, Plaintiff Robbins has sustained damages in an amount to be proven more specifically at trial.

V. DAMAGES

138. Plaintiff realleges each and every allegation of paragraphs 1 through 137 above, and incorporates the same as if fully set forth, and for a cause of action against the Defendants, alleges as follows:

139. As a direct and proximate result of the Defendants' aforementioned conduct, and any other negligence, intentional misconduct, or violations of applicable statutes, codes, regulations or ordinances which may be brought out at trial, Plaintiff Robbins has sustained damages which have resulted in or may result in:

a. Economic losses and property damages;

b. Lost time;

c. Injury to personal and business reputation;

d. Emotional harm; and

e. Other damages to be demonstrated at trial.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiff Robbins prays for judgment against the Defendants as follows:

A. Declaratory judgment that the Fence Easement provides Defendants only the limited right to use the Rock Creek Road for the specific purpose of repair and maintenance of the 276 feet of fencing described in said easement;

B. Declaratory judgment that the Defendants have no right to enter onto the Plaintiff Robbins' private property other than that provided by the Fence Easement;

C. Declaratory judgment that the Fence Easement terminated by virtue of the Defendants' misuse thereof.

D. Declaratory judgment that the alleged ability of Plaintiff Robbins' livestock to access BLM property, without actual evidence of trespass, is insufficient to permit the BLM to presume that Plaintiff Robbins' livestock have trespassed on BLM land;

E. Injunctive relief prohibiting Defendants from instigating further trespass actions against Plaintiff Robbins when they have no evidence that Plaintiff Robbins' livestock have actually entered onto BLM lands where they are not permitted;

F. Compensatory damages in an amount to be more specifically demonstrated at trial;

G. Damages for emotional distress;

H. Treble damages pursuant to 18 U.S.C. § 1964 (c);

I. Costs of suit herein incurred;

J. Actual attorneys' fees;

K. Prejudgment interest;

L. Punitive damages;

M. Such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED ths 3rd day of November, 2003.

/s/ KAREN BUDD-FALEN
KAREN BUDD-FALEN
MARC R. STIMPERT
RICHARD B. AUBUCHON
BUDD-FALEN LAW OFFICES, P.C.
300 East 18th Street
Post Office Box 346
Cheyenne, Wyoming 82003-0346
(307) 632-5105 Telephone
(307) 637-3891 Telecopier

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing to be deposited in the U.S. Mail this 3rd day of November, 2003 to the following:

Thomas D. Roberts
2120 Capitol Avenue, Room 4002
Post Office Box 668
Cheyenne, WY 82003

/s/ KEARN HULL
KEARN HULL

[WYW-12787
RE-WI-214
(016)]

[20 APR 1995]

CERTIFIED MAIL NUMBER P 008 868 798
RETURN RECEIPT REQUESTED

H. Frank Robbins, Jr.
Route 5, Box 101B
Tuscumbia, AL 35674

Dear Mr. Robbins:

On February 23, 1995, Joe Vessels discussed with you the assignment of road right-of-way WYW-127878 from High Island Ranch and Cattle Company to you as the current owner of the property accessed by the road. This assignment is necessary if you intend to maintain the road or use it for other than casual use. I have enclosed a copy of the right-of-way grant for your reference.

As Mr. Vessels also discussed with you, a condition of the right-of-way is the reciprocal grant of a non-exclusive easement to the United States for administrative access across your deeded lands in the Rock Creek area. This easement was originally signed by the previous landowner shortly before you acquired the property and was not recorded with Hot Springs County in time for you to be aware of it upon purchase. In order to ensure an easement that can be properly recorded with the county, we need to have the current owners of record sign the easement. I have enclosed the easement

document for you and the other owners to sign. Please note that each signature must be witnessed by a notary public and the notary's certification must acknowledge that.

Please return the signed easement document to this office within thirty (30) days of receipt of this letter. Please also provide the name(s) that you would like the right-of-way assignment in. The normal right-of-way assignment fee will be waived because of the reciprocal easement requirement. If you do not respond to this request, we will assume that you are not interested in having the right-of-way assigned to you and will proceed with canceling the right-of-way grant.

The annual rental on this right-of-way is adjusted to compensate the holder for the relative value of the reciprocal non-exclusive easement. The 1995 rent of $246.00 is now due. Please submit this payment with the above requested easement and other information.

If you have any questions, please contact Steve Till or Joe Vessels at (307) 347-9871.

Sincerely,

/s/ CHARLES F. WILKIE
CHARLES F. WILKIE
Bighorn Basin Area Manager

Enclosures

cc: High Island Ranch
P.O. Box 71B
Hamilton Dome, WY 82427

BBRA: JVessels:4/19/95:G\VESSELS\ROBBINS2.LET

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NONEXCLUSIVE ROAD EASEMENT

Tract No.
RE-W1-214

For the sum of $ 1.00 and the grant by the United States of R/W No. WYW-127878

H. Frank Robbins, Jr., Karen P. Robbins, Holli Ann Robbins, and Harvey Frank Rollins, III,

herein after called Grantor, whether one or more, does grant to the UNITED STATES OF AMERICA, and its assigns, a nonexclusive easement to use, maintain, improve, and repair an existing road located on the following-described real property situated in the County of Hot Springs, State of Wyoming, to wit:

Sixth Principal Meridian;
T.43N., R. 102W.,

Sec	5	W½SW¼, SE¼SW¼;
	6	W½NE¼, NE¼SE¼
	8	Ne¼NW¼W¼NE¼,
	9	SW¼, SW¼
	17	Lot 4;
	21	Lots 1, 2 and 3, SW¼NE¼

T.44N., R. 102W.,

Sec	31	NW¼NW¼, SE¼, NW¼

the said parcel being all that portion of said property contained within a strip of land 30 feet in width being 15 feet on each side of the centerline; which road is more particularly shown on Exhibit A which is attached

hereto and made a part hereof. The parcel of land to which the above description applies contains 15.58 acres, more or less.

When the authorized officer of the Bureau of Land Management determines that the road above described might be used for the sale of resources from public lands, the contract for such resource will provide that if the purchaser shall use the road he shall do no subject to the following provisions.

1. Avoid vehicle use when wet conditions would cause road damage
2. Maintain the road if damage results from use authorized by the Bureau of Land Management.

The easement herein granted is for the full use as a road by THE UNITED STATES OF AMERICA, and its licensees, and is subject to the effect of reservations and leases, if any, of oil, gas, and minerals in and under said land; provided, that any use of the roadway for oil and/or gas activities shall be subject to permission from the Grantor.

TO HAVE AND TO HOLD said easement unto the UNITED STATES OF AMERICA, and its assigns, for a term commencing on the date shown below and continuing until March 31, 2014.

Grantor covenants and warrants that he is lawfully seized and possessed of the land aforesaid and has the full right, power and authority to execute this conveyance, and that said land is free and clear of liens, claims or encumbrances, except as shown above, and that he will defend the title to the easement conveyed herein and quiet enjoyment thereof against the lawful claims and demands of all persons.

Accepted subject to approval of title by the Department of Justice:

Dated this Day of , 19

_____

(Signature of Authorize Officer)

District Manager

(Title)

(PDF Map Goes Here)

[PLAINTIFF'S EXHIBIT 17]

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NONEXCLUSIVE ROAD EASEMENT

Tract No.
RE-W1-214

For the sum of $ 1.00 and the grant by the United States of R/W No. WYW-127878

High Island Ranch and Cattle Co., a Wyoming Corporation,

herein after called Grantor, whether one or more, does grant to the UNITED STATES OF AMERICA, and its assigns, a nonexclusive easement to use, maintain, improve, and repair an existing road located on the following-described real property situated in the County of Hot Springs, State of Wyoming, to wit:

T.43N., R. 102W.		
Sec	5	W¼SW¼, SE¼SW¼;
	6	W¼ NE¼, NE¼ SE¼
	8	NE¼ NW¼ W¼ NE¼, E¼ SE¼, NW¼,SE¼
	9	SW¼, SW¼
	17	Lot 4;
	21	Lots 1, 2 and 3, SW¼ NE¼
T.44N., R. 102W.		
Sec	31	NW¼ NW¼, SE¼, NW¼

Sixth Principal Meridian;

the said parcel being all that portion of said property contained within a strip of land 30 feet in width being 15 feet on each side of the centerline; which road is more particularly shown on Exhibit A which is attached hereto and made a part hereof. The parcel of land to which the above description applies contains 15.58 acres, more or less.

When the authorized officer of the Bureau of Land Management determines that the road above described might be used for the sale of resources from public lands, the contract for such resource will provide that if the purchaser shall use the road he shall do no subject to the following provisions.

1. Avoid vehicle use when wet conditions would cause road damage
2. Maintain the road if damage results from use authorized by the Bureau of Land Management.

The easement herein granted is for the full use as a road by THE UNITED STATES OF AMERICA, and its licensees, and is subject to the effect of reservations and leases, if any, of oil, gas, and minerals in and under said land; provided, that any use of the roadway for oil and/or gas activities shall be subject to permission from the Grantor.

TO HAVE AND TO HOLD said easement unto the UNITED STATES OF AMERICA, and its assigns, for a term commencing on the date shown below and continuing until March 31, 2014.

Grantor covenants and warrants that he is lawfully seized and possessed of the land aforesaid and has the full right, power and authority to execute this conveyance, and that said land is free and clear of liens, claims or encumbrances, except as shown above, and that he will defend the title to the easement conveyed herein and quiet enjoyment thereof against the lawful claims and demands of all persons.

Accepted subject to approval of title by the Department of Justice:

Dated this 18th Day of March, 1994

[ILLEGIBLE]
(Signature of Authorize Officer)

District Manager
(Title)

[ILLEGIBLE]

_____

_____

CORPORATE ACKNOWLEDGMENT

STATE OF Massachusetts)
) ss:
COUNTY OF Esseex)

On this 18th day of March, 1994, before me personally appeared George H. Nelson, Jr. and to be the owner, President of the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated he authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above-written.

[SEAL]

[ILLEGIBLE]
Notary Public in and for the
State of Massachusetts
Reading at Danvers, Ma

My commission expires: July 21, 2000

[PLAINTIFF'S EXHIBIT 19]

[WYW-127878 (016)]

[APR 06 1994]

CERTIFIED MAIL NUMBER P.046 890 535
RETURN RECEIPT REQUESTED

DECISION

High Island Ranch and Cattle Co.
P.O. Box 71B
Hamilton Dome, WY 82427

Right-of-Way Grant WYW 127878 Issued
Rental Determined

Enclosed is a copy of a right-a-way (R/W) grant (serial number WYW-127878) for the construction, operation, maintenance and termination of an access road which has been approved by the Bureau of Land Management. The rental for linear R/W is determined according to regulations found at 43 CFR 2803. 1-2. The rental for the above-referenced R/W is $182.00 for a one year term through December 31, 1994, adjusted for calendar year billing. The rental rate has been reduced to 71 percent of the current fair market value rental rate to compensate you for the relative value of the reciprocal nonexclusive easement. The processing fees have been credited toward the rental and the balance of $118.00 has been refunded to you. You should receive the refund in four to six weeks. We will provide you with a copy of the reciprocal nonexclusive easement docu-

ment after we have it recorded with Hot Springs County.

All subsequent rental payments will be due at the beginning of the calendar year and thereafter in one year increments. Future billings will reflect the latest adjusted schedule as published in the Federal Register, and the 71 percent reduction for the reciprocal non-exclusive easement.

The issuance of this R/W grant constitutes a final decision by the Bureau of Land Management in this matter.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from this error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2804.1 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, You have the

burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show a sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of The appellant's success on The merits,

(3) The likelihood of immediate and irreplaceable harm if The stay is not granted, and

(4) Whether The public interest favors granting the stay.

If you have any questions, please contact me at The above address or telephone (307) 347-9871.

Sincerely,

/S/ JOSEPH VESSELS
JOSEPH T. VESSELS
Grass Creek Area Manager

Enclosures:

Form 2800-14
Form 1842-1

FORM 2800-14
(August 1985)

Issuing Office
Grass Creek Resource Area

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

SERIAL NUMBER WYW-127878

---

1. A right-of-way is hereby granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976, (90 Stat. 2776; 43 U.S.C. 1761).

2. Nature of Interest:
   a. By this instrument, the holder:

      High Island Ranch and Cattle Co.
      P.O. Box 71B
      Hamilton Dome, Wyoming 82427

receives the right to construct, operate, maintain, and terminate an access road, on public lands described as follows:

6th Principal Meridian, Wyoming

T.43N., R.100W, Section	17	S½, SW¼SE¼;
	18	Lot 3, E½SW¼, S¼SE¼;
	20	N½NE¼;
	21	S½NE¼, N½NW¼; NE¼SE¼;
	22	N½SW¼,N½SE¼

T.43N., R.101W.,Section	13	S½NE¼, SW¼NW¼, N½SW¼, NW¼SE¼;
	14	S½NE1¼, NW¼NW¼, S½NW¼;
	15	NE¼; S½NW¼, W½SW¼;
	20	NE¼SE¼, S½SE¼;
	21	NE¼NE¼, S½NE¼, SE¼NW¼, N½SW¼;
	22	NW¼NW¼;
	29	W½NE¼, N½SW¼, SW¼SW¼, NW¼SE¼;
	30	Lots 6, 7 and 13;
T.43N., R.102W., Section	21	N½NE¼, SE¼NE¼;
	22	NE¼NW¼, SW¼NW¼;
	23	SE¼SE¼;
	25	SW¼NE¼, W½NW¼, SE¼NW¼;
	26	NE¼NE¼, NW¼NW¼.

b. The right-of-way or permit area granted herein in 30 feet wide, 76,930 feet long and contains 53 acres, more or less.

c. This instrument shall terminate 30 years from it's effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal Law regulation.

d. This instrument may be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.

e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding by the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental:

For and in partial consideration of the rights herein granted the holder agrees to grant Nonexclusive Road Easement No. RE -W1-214 to the United States. Said easement to be executed by the grantor prior to approval of this right-of-way grant by the BLM authorized officer.

For and in consideration of the remainder of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, wherever necessary, to reflect changes in the fair market rental value as

determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

   a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.

   b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4) (d) or as directed by thee authorized officer.

   c. Each grant issued for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.

   d. The stipulations, plans, maps, or designs set forth in Exhibit A, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set for th herein in their entirety.

   e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.

f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

g. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operation in the immediate area of such discovery will be made by the authorized to proceed is issued by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.

h. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of two (2) inches deep the soil shall be deemed too wet to adequately support construction equipment.

i. Construction and maintenance activities, surface disturbance, and other commercial traffic will be prohibited during the period from November 1 to June 15, each year, for the protection of

wildlife habitat values. Any exceptions to this requirement must have prior written approval from the authorized officer.

j. The holder shall conduct all activities associated with the construction, operation, maintenance, and termination of the right-of-way within the authorized limits of the right-of-way.

k. The holder shall seed all disturbed areas, using a method and seed mixture suitable for the location, as directed by the authorized officer. Seeding shall be repeated if a satisfactory stand is not obtained as determined by the authorizing officer upon evaluation after the third growing season.

l. If snow removal from the road is undertaken, equipment used for snow removal operations shall be equipped with shoes to keep the blade two (2) inches off the road surface. Holder shall take special precautions where the surface of the ground is uneven and at drainage crossings to ensure that equipment blades do not destroy vegetation.

m. Holder shall maintain the right-of-way in a safe, usable condition, as directed by the authorized officer. A regular maintenance program shall include, but is not limited to, blading, ditching, culvert installation and cleaning, cattleguard cleaning, and surfacing.

n. Use of this right-of-way for oil, gas, and/or other mineral exploration, development or production is not permitted under this authorization.

IN WITNESS THEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant to permit.

[Illegible]	[Illegible]
(Signature of Holders)	(Signature of Authorized Officer
[President]	[Area Manager]
(Title)	(Title)
[3/18/94]	[Apr. 5, 1994]
(Date)	(Effective Date of Grant)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 04-8016

HARVEY FRANK ROBBINS, PLAINTIFF-APPELLEE

v.

CHARLES WILKIE, DARRELL BARNES, TERYL SHRYACK, MICAHEL MILLER, GENE LEONE, AND DAVID WALLACE, DEFENDANTS-APPELLANTS

On Appeal from the United States District Court
For the District of Wyoming

PLAINTIFF-APPELLEE'S SUPPLEMENTAL APPENDIX
VOLUME I

APPEARANCE

Karen Budd-Falen
Marc R. Stimpert
BUDD-FALEN
LAW OFFICES, P.C.
300 East 18th Street
Post Office Box 346
Cheyenne, WY 82003
(307) 632-5105 Telephone
(307) 637-3891 Telefax

Attorneys for Plaintiff-
Appellee

[3]

PROCEEDINGS

(Deposition proceedings commenced
7:50 a.m., September 9, 2003.)
(Witness sworn.)
EDWARD LEE PARODI,

called for examination by the Plaintiff, being first duly sworn, on his oath testified as follows:

DIRECT EXAMINATION

Q. (BY MR. FRENCH) Sir, please tell us your name and spell your last name.

A. Edward Lee Parodi, P-a-r-o-d-i.

Q. Mr. Pardoi, how old are you?

A. Fifty-three.

Q. Where were you born?

A. Tacoma, Washington. Actually, Fife, Washington.

Q. Which is close to Tacoma, Washington?

A. Right.

Q. Okay. We're going to be taking your deposition here today so, what will happen is I'll ask some questions.

You answer those questions. If at any time you want to take a break for any reason, please let me know. We'll be glad to accommodate you. You need to answer the questions out loud. Sometimes if you shake your head instead of answering yes or no, we'll ask you just to

answer yes or no because she has to take down a response that we can read [4] later on.

A. Okay.

Q. Before we get started today, let me ask you some questions about your medical status as you sit here today. It's my understanding that you have hepatitis C?

A. Yes, I do

Q. Are you taking any medicines for that hepatitis C?

A. Yeah, I 'm currently in month six of peginterferon treatment and ribavirin, which is a companion drug to the interferon to combat the virus.

Q. Are you taking any other medicines right now?

A. Are you talking about today or are you talking about—

Q. Today, yes.

A. Today, no. Tylenol. I've taken my ribavirin, which is my companion drug that I have to take during this treatment. The treatments are an injection a week for a year. So other than that this morning, no. Those three, my vitamin and a stomach pill because it's in knots.

Q. Are there any other medications that you typically take?

A. Yes, I do take Percocet for pain an discomfort from that treatment plus other disabilities for obvious reasons, and I take a sleeping aid in the evenings and [5] that's a combination of two drugs and it's called

trazodone/flurazepam, and I usually don't take full doses because it doesn't require a full does for me to get a couple hours sleep. Because of the treatment, it wouldn't matter if I took four or ten, I would still only get two three hours of sleep a night. That's a side effect of the interferon.

Q. But you haven't taken the Percocet or the other today?

A. No. As a matter of fact, I don't have any one hand because the VA in their infinite wisdom—we spoke about that. But no I'm not.

Q. And you didn't take a sleeping aid last night?

A. (Witness shakes head.)

Q. Tell me about your mind. Is your mind clear today?

A. My mind is very clear this morning. With the interferon treatment, I must admit that there are times when I sometimes kind of get emotional and it's a short thing. It comes and it goes. It's like a wave and because of the treatment, you never really know when that's going to happen or what will trigger it. So I'm just saying that some time I may get emotional for a second, and if I ask for a break, please allow me that time to regroup.

Q. Absolutely.

[6]

A. That's all I'm asking.

Q. Absolutely. And I don't mean to be rude. I assume if you get emotional we'll be able to tell, tears or something else?

A. Yeah. And it's not instability as much as it is a side effect of the peginterferon after—I've been doing this for six and a half months and now I'm totally saturated. I've lost 40 pounds in six months and the sleep thing, but it's all part of the treatment.

Q. Do you have any problem expressing your thoughts today?

A. No.

Q. Any problem remembering other than as normally happens when you get to be 53 like me and you can't remember like you did when you were 23?

A. Well, unfortunately, I was trying to remember things I wish I could forget.

Q. And we asked today that we start at 8:00 a.m. on Tuesday. Was that to meet your medical schedule?

A. Exactly. I do my treatments on Wednesday mornings as early as I can. That give me pretty much a full day on Wednesday of somewhat mobility and I'm pretty functional. By the end of the day I start getting real sick, and by Thursday and Friday I'm pretty useless, to tell you the truth.

[7]

Q. So is Tuesday early morning the best day in time of the week for you?

A. It is the best time of the day for me mentally, physically and energeywise because it take me five days to get over the treatment and then I'm ready to go again.

Q. Are you having any problem understanding my questions?

A. None whatsoever, sir.

Q. I'd like you to tell me a little bit about your parents. Where are they from?

A. They are both from—well, actually my mother was born in Bismarck, North Dakota. My dad was born, I believe, in Ellis Island.

Q. In New York?

A. In New York, yeah.

Q. He was an immigrant, then?

A. No, he was a citizen, but his parents were immigrants.

Q. Of what extraction?

A. Italian and my mother being Russian-German from North Dakota, of course.

Q. And did you graduate from high school?

A. I graduated from high school while I was in Vietnam. I had a commander that was very smart and sent me to the Air Force and sent me to school and made me get my [8] diploma so I could become a crew chief on a helicopter.

Q. How far did you go in what I call regular school?

A. Eleventh.

Q. Was that in the state of Washington?

A. Yes.

Q. And when did you enlist in the armed forces?

A. 1968.

Q. Where were you stationed when you were in the armed forces?

A. How do you mean stationed?

Q. Where did you serve your tours of duty?

A. I got trained and sent to Vietnam.

Q. How long were you in Vietnam?

A. Twenty and a half months, which is two and a half tours.

Q. I s that the normal amount of tours?

A. Ten months is a normal tour.

Q. Why did you do more than the normal tour?

A. I had a job to do and I had been with the 9th Infantry in late '68 or '69, support combat services, and there were still a lot of work to do and a lot of guys dying. So I decided I'd get in the helicopters where I could help us and still help the cause but more or less help more people, our own people.

Q. Are you a decorated war hero?

[9]

A. Yeah. Yes, sir.

Q. What kind of decorations did you receive?

A. Oh, boy. They are here, but I've received the Bronze Star for heroism in aerial flight. Actually, it says aerial flight. Might say ground combat. I was on the ground when it happened but I jumped out of the helicopter.

I think it's for ground combat. I have an air medal for heroism in aerial combat flight. I have 23 total air medals, which you get for every 25 hours of combat flight, and I have three Army commendation medals. I have three four Vietnam service medals. I have a presidential citation and all the other normal ribbons that you get during your service time.

Q. Were you ever injured in Vietnam?

A. Yes, sir.

Q. Do you have a physical disability from that?

A. A minor physical one. That's why I'm battling my battle with the VA right now because they don't want to compensate me for this disease.

Q. For hepatitis C?

A. Oh no. They will treat me but they won't compensate me, and that's why I gave you that article this morning.

Q. After you got back from Vietnam, that would have been about 1970?

[10]

A. '70, September of 1970 and then I did a year and a half at Fort Leavenworth, Kansas to finish out my tour the Army because I had reenlisted in Vietnam so I could

stay in Vietnam because they were going to rotate me home and I wanted to stay.

Q. And after you got back and got out of the Army

A. Can I back up, Tom?

Q. Yeah.

A. You need to know what I did in Fort Leaven worth, Kansas. I was NCOIC at the burial detail at the national cemetery.

Q. That means what, you assisted in the burial of the—

A. I was a noncommissioned officer in charge of the whole burial detail from receiving the body to getting it in the ground with full military honors.

Q. You did that for how long?

A. Eighteen months.

Q. After you left the Army, that would have been about 19

A. '72.

Q. —72? It's my understanding that at some point you went to work for the National Park Service?

A. 1980.

Q. From 1972 to 1980 what did you do generally?

[11]

A. You name it, I did it.

Q. Various different kinds of jobs?

A. Everything. You know, from ranch work to—I was born and raised on a farm. From ranch work to driving truck to tending bars to, you know, and mostly doing like lot of us other vets for ten or twelve years, being pretty lost.

Q. I understand that there came a time in about 1980 when you went to work for the National Park Service?

A. Yes, sir.

Q. Tell me about that.

A. Luck.

Q. What kind of job did you have?

A. Ordained ordinance. I was sitting in a bar and a guy was listening to me tell war stories and he goes, "Hey, buddy, I'm starting a brand-new crew at Mount Rainier National Park and it's called Helitack and we don't have any experience. You want to go to work for the government? You're a vet." Wow. Back in uniforms.

Q. How long did you work for the Park Service?

A. I think a total of nine and a half years.

Q. Did you spend the whole time at Mount Rainier?

A. No sir.

Q. Where else did you work?

A. Grand Teton National Park, which is what got me [12] in Wyoming.

Q. Did you do the same kind of work in Grand Teton that you did in Mount Rainier?

A. No, as a matter of fact, totally different. I went a whole different direction with my career and I did that partly because of my love for wanting to be in Wyoming. I dreamt about it since I was a kid and that was one thing I know once I got on with the Department of Interior working in the Park Service or BLM or one of the land management agencies that I could transfer around and end up where I wanted to retire and live my life out. So used the government in that respect.

Q. How long did you work for the Park Service total, approximately?

A. Ten years, twelve years.

Q. I think I asked that. I apologize.

A. I would have to look at my records. It might have been less or it might have been more.

Q. It's my understanding that at some point in time you went to work for the BLM, the Bureau of Land Management?

A. Yeah.

Q. And where did you go to work for the BLM?

A. In Cody, Wyoming.

Q. What was your job in Cody?

[13]

A. I was a range technician.

Q. So that would have been about what year, about 1990?

A. '90.

Q. As a range technician, what did you do?

A. Range compliance work for the range program, which all of us understand what that is.

Q. And how long did you work in Cody?

A. There and a half years.

Q. The whole time you were what's called a range technician?

A. Technician.

Q. And the range technician assists on the range with livestock counts and other things like that; is that right?

A.. Assist, no. I had a real good boss up there when he hired me, and no, I was given full rein to do compliance work. I didn't assist in compliance work. I did the compliance work. There's a big difference.

Q. Tell us what compliance work is.

A. I made sure that the permittees followed their AMPs to the best of their ability and kept track of their projects and whatnot and made sure things stayed in line, and when it wasn't, gave them opportunity to take care of it, and if they didn't, then did the trespass thing.

[14]

Q. And what you worked on you transferred to Worland.

A. Yeah.

Q. About what year?

A. 1993.

Q. And when you transferred to Worland, what was your job?

A. Can I take a minute?

Q. Yes.

(Brief recess taken.)

Q. (BY MR. FRENCH) Is your mind clear now?

A. Yeah. It just brought up some stuff.

Q. Okay. And how long did you work for the BLM out of the Worland office?

A. I guess three and a half years.

Q. When did you—did you retire from the Borland office?

A. Yes, sir.

Q. About when was that?

A. '96, I believe.

Q. Do you remember what month it was?

A. No.

Q. Let me give you a frame of reference.

Q. Because I was—social security that time period was—

[15]

Q. Let me give you a frame of reference. Mr. Robbins had a criminal trial in August—excuse me, December of 1997 and you testified at that trial.

A. Yes, sir.

Q. Had you retired before that?

A. Yes, sir.

Q. Was it the same year that you retired that the criminal trial was or do you remember?

A. Hadn't even thought about that. I'm not sure, Tom.

Q. That's fine.

A. Maybe it was late '95, summer of '95 that I retired.

Q. I'm just trying to give a frame of reference.

A. It seems like '96 and I didn't bring my retirement papers with me. I'm sorry.

Q. That's fine. We're not worried about exact dates. We're just trying to help you out a little bit.

A. I know.

Q. Who was in management in the Worland office in 1993 when you started? Who was the top person in that office?

A. Darrell Barnes.

Q. What was his job?

A. Worland district manager.

[16]

Q. Was Mr. Joe Vessels in that office?

A. At the time?

Q. When you started.

A. Whoa, the day I started or when I started because we went through an organizational change and Joe can into the scene shortly after I got there.

Q. Okay. Was Charles Wilkie there at Worland when you started?

A. He was there.

Q. How about Mr.—

A. They were both there in different positions at that time.

Q. What about Mr. Gene Leone?

A. He was there.

Q. And what about Teryl Shryack?

A. Not when I started there, no.

Q. Now I'm going to ask you when you worked at Worland, was your title the same, our job the same as when you worked in Cody?

A. Yes.

Q. And what would be a typical day for you when you worked at the BLM in Worland?

A. A typical day?

Q. Yeah.

A. I'd get up in the morning, be there by 6:30, [17] 7:00, pretty flexible hours because they are on the flex time. Look through my allotment files and I usually had a plan where I was going from day to day to do compliance work. Sign out on the board, get the keys to my vehicle, grab my books, grab my equipment that I need

and hit the field and go to where I said I was going out on the board to my job, you know. That might have been looking at a reservoir over in 15 Mile or looking at a fence line over on the Wood River or, you know, or counting cows up on Carter Mountain.

Q. Did you ever receive any awards from the BLM when you worked in the Worland office?

A. I received a couple on-the-spot cash awards and couple special achievement awards.

Q. Do you remember who was—Mr. Barnes the head guy at that point when you got those awards?

A. Yeah. Yes, sir.

Q. Now I'm going to direct your attention to a time about the time when Frank Robbins purchased the High Island Ranch.

A. Okay.

Q. Do you remember when that was? I'm not asking for a date, but do you remember in your mind about when that was in May 1994?

A. I remember that.

[18]

Q. Before he bought the High Island Ranch, Mr. Robbins bought the High Island Ranch, before that time, was it your understanding that the BLM wanted to purchase the High Island Ranch?

MR. ROBERTS: I'm going to object, it's leading.

Q. (BY MR. FRENCH) Go ahead.

A. What do I do?

Q. That means you can answer. Go ahead, you can answer my question. He made an objection.

A. Fine.

Q. But you can go ahead and anser the question. You want me to repeat the question?

A. Yeah. Yes, sir.

Q. Before Mr. Robbins purchased the High Island Ranch, did the BLM want to purchase the High Island Ranch?

A. I can't sit here and categorically say that the BLM wanted to because nobody told me. Was the general impression that they were trying to do some conservation easement program and stuff? Yes. That was common knowledge that they were trying to do some kind of management—you know, I'm not privy to that, but I knew they they were working some other deals.

Q. Was it your understanding that the BLM wanted to acquire the High Island Ranch either in conjunction with [19] their Wyoming Game & Fish or with the Forest Service?

MR. ROBERTS: Objection, leading.

Q. (BY MR. FRENCH) Go ahead.

A. What did you understand—did you know who in the office was working on that, I mean who in management?

A. I would imagine it would be top management, realty, rec, wildlife, range, they had to be all working together to do any kind of agreements or whatever.

Q. Had you done work with High Islands Ranch before it was purchased by Mr. Robbins?

A. What do you mean sir?

Q. Had you done compliance work on the High Island Ranch?

A. Sure.

Q. And who was the owner on the High Islands Ranch, if you know, when you—

A. George Nelson was a sublesee at the time. In other words, there was a mix of cattle on the ranch.

Q. And at some point in time did you become aware or did you hear that Mr. Robbins had purchased the High Island Ranch?

A. Sure. Yes, sir.

Q. And how did you find out about that or what did [20] you hear about his purchase of the High Island Ranch?

A. The first thing I heard was the rich SOB from Alabama got it. That's how I found out about it.

Q. Do you remember who said that?

A. Not exactly, sir.

Q. Was that just what I would call coffee talk or how was that rich—you heard something about the rich SOB.

A. Yeah, it was when you cruise in there in the morning and all the range staff, they always got together and plot out the day, and yea, that was the way it came across.

Q. Do you know why—did you come up with an impression about why—I mean, somebody might be called a rich SOB in kind of a joking way and sometimes it might be in a way that they were pretty serous. Did you take it that this attitude was serious or people were joking about it when they called him an rich SOB?

A. Oh, I think I let most things like that pass personally. You know what I'm saying? Did I form an opinion down the road? Sure.

Q. As time passed, did you hear any more comments, negative comment about Mr. Robbins purchase of the High Island Ranch from the people at the BLM?

MR. ROBERTS: Objection, leading.

Q. (BY MR. FRENCH) Go ahead.

[21]

A. I knew that there was a meeting upstairs towards the beginning of Frank's - and I don't think it was right after he took possession or showed up here, physical possession. And they were quite upset at something with him and that they thought he was unreasonable and he had a tape recorder and this was gong to be a heck of a fight. That's all I remember about that.

Q. How did you get that information or who did you hear this from?

A. I believe my supervisor at the time.

Q. Who was your supervisor at the time?

A. Gosh, I think it was Jim Cagney.

Q. And he was relating to you information and that's how you formed that opinion, right?

A. Yes, sir.

Q. But you didn't hear management—

A. No.

Q. —at that point?

A. No, I was never privy to that.

Q. Did there come a time when you heard any management people, specifically Mr. Vessels, say anything negative about Mr. Robbins?

MR. ROBERTS: Objection, leading.

A. I'm not spacing out on you. I'm thinking. I'm searching for the words. Mr. Vessel's attitude towards [21] Frank Robbins changed immensely.

Q. (BY MR. FRENCH) From the time he purchased it?

A. From—yeah. Yes, sir.

Q. How did it change?

A. Things changed immensely. It's like a snowball.

Q. And in what way did they change over time?

A. It just got worse and it got worse and it got worse. They wouldn't negotiate. I was led to believe one thing and I couldn't find what I was lead to believe happening. Now, I don't know, Tom what goes on in realty don't

know what goes on with recreation, but fortunately or unfortunately, in that office if you're a team player, individuals I involved in this stuff will divulge suff.

Q. Okay. So—

A. And the attitude just got worse and worse and worse toward Mr. Robbins, and pretty soon I was being asked to do things that I wasn't authorized—I shouldn't have been authorized too, look at easement stuff and look at right-of-way stuff and look at - asked to go out and was worried about range and I didn't have a range problems with Mr. Robbins.

Q. Were you—you said Mr. Vessels' attitude changed immensely over time. What did it become overtime?

[23]

What did it change from?

A. It changed from a professional attitude towards a hostile attitude.

Q. Did you ever find out why or do you know why Mr. Vessel's attitude changed? Did he ever tell you?

A. Not in a lot of words not in specific words, I should say.

Q. Did you come to any conclusions about why Mr. Vessel's attitude had changed over time about Mr. Robbins?

A. Conjecture and opinion, okay. Yes, sure I do.

Q. What is it?

MR. FRENCH: I would object to stating a conjecture opinion.

Q. (BY MR. FRENCH) Go ahead.

A. Searching for words. It has been my experience that people given authority and not being held in check and not having solid convictions will run amuck and that it what I saw happening.

Q. Do you know why—did Mr. Vessels ever express [24] to tell you anything about why he began to have a hostile attitude toward Mr. Robbins?

MR. ROBERTS: Objection, leading. It states facts not in evidence.

Q. (BY MR. FRENCH) Go ahead.

A. I knew they were having trouble with recreation-permits. They were having trouble with his dude operation, they were having trouble the easement right-of-way, they were having trouble negotiating and it just —of course, I'm not privy to what was going on in the back, but that was the general attitude. It was just getting hostiler and hostiler as we went on.

Q. Did you ever hear Mr. Gene Leone say anything negative about Mr. Robbins?

MR. ROBERTS: Objection, leading.

A. Yes, sir, I did.

Q. (BY MR. FRENCH) Tell me about that.

A. Well, I'll tell you where it started. That started when Mr. Robbins had his little affair with Mrs. Pennoyer up on the water hole on the Rock Creek route. The day after that happened, I walk in the office, Mr. Leone was on the computer and had been in contact with Hot Springs County Sheriff's Department and was

getting all kinds of involved in whatever was going on with this civil thing with Mrs. Pennoyer, and he looked me straight in the eye [25] and he says, "I think I finally got a way to get his permits and get him out of business." quote.

Q. And did you ever hear Mr. Leone say anything like that?

A. That continued. That wasnt a one-day thing. From that point on, that was a doily admission from Mr. Leone.

Q. Did that attitude ever go to anybody else in the BLM?

A. How could it not when Mr. Wilkie and Mr. Vessels and half the crew is standing around watching him and listening to him?

Q. Did you ever—did anyone ever at a range meeting—did Mr. Barnes ever express anything in range meeting or any other time about getting Mr. Robbins?

MR. ROBERTS: Objection, leading.

A. Mr. Barnes would gave never said a word to me. I don't thin I spoke ten words to Mr. Barnes my whole time there.

Q. (BY MR. FRENCH) At this point in time, this is about the time you just expressed what you heard Mr. Leone say these things, did it appear—did Mr. Vessels have this hostile attitude toward Mr. Robbins?

MR. ROBERTS: Objection, leading.

A. Of course we all did.

[26]

Q. (BY MR. FRENCH) When you say, "We all did," do you mean "we all did"?

A. Up to that point I was doing everything I could to find anything I could on Mr. Robbins in a range category. Everything I found he took care of.

Q. Who took care of?

A. Mr. Robbins and his people. If I found a problem on Mr. Robbins' ranch, I called Mr. Robbins and said "You got four cows out." He would get a hold of Dave Armstrong and I'd get a hold of his ranch foreman and they'd go get them. If they had problems at the time, they would take care of it for me. I found project problem on the fence lines. He sent a crew out and fixed it. He had just taken possession of a poorly managed ranch. So, I couldn't find anything, and anything I did find was never willful or appeared willful, and in my investigations and if you look back at my service records, you'll find out that anything I submitted was solved.

Q. Did you have—in your view, was Frank Robbins treated differently than other permitees?

MR .ROBERTS: Objection, leading.

A. Of course he was.

[27]

Q. (BY MR. FRENCH) Was he treated differently by you?

A. I tried not to. I tried not to let this momentum thing that was happening happen to me, too. I tried to stay objective. I tried to do my job and do it right.

Q. In your opinion, did other members—let me put it this way: Did Mr. Leone treat Mr. Robbins differently than other permittees?

MR. ROBERTS: Objection, leading.

A. I wouldn't know because I wasn't privy to what Mr. Leone was doing with his other permitees. All I knew is what he was spouting of to me.

Q. (BY MR. FRENCH) Okay. In your view, was Mr. Leone's spoken statements about what he was going to do to Mr. Robbins, were they appropriate or within the appropriate mission of the BLM?

A. I'm going to expound here a little bit if it's okay.

Q. Well, can you answer the question, yes or no?

A. Repeat the question.

Q. Do you think Mr. Leon's statements to you were within the appropriate mission of the BLM?

A. No.

Q. Do you remember Mr. Vessels saying anything about treating—or do you remember Mr. Vessels ever giving [28] approval to Mr. Robbins begin treated differently than other permitees?

MR. ROBERTS: Objection, it's leading.

Q. (BY MR. FRENCH) Go ahead.

A. I was never told to treat him any different than anybody else. I was told to look closer, stay on top of it. Telling me, that means I'm going to do my job, so if I'd have found something, I would have turned it in.

Q. But you were told to look closer at Mr. Robbins than other permitees?

A. At the time that was the emphasis was the High Island Ranch.

Q. Was there—did you ever hear anything else like that, kind of general attitude?

A. Well, up to the point where I—up to about the point you just asked me about, sure, all of us. It's kind of how it works, Tom. Let me explain something to you real quick, okay, if you don't mind.

Q. Sure.

A. In a perfect world, it would be nice of all the permitees were treated exactly the same, but it's not a perfect wold, and if people followed the SOP and the [29] mission and goal statements of the BLM, I don't think we'd be sitting here. Do you understand what I'm saying? There is no reason for the guy on this range site and this range site with a fence separating them, same everything to have a totally different Allotment Management Plan and totally have different socioeconomic effects on the community when their mission is to stabilize socio-economic impact on the community to help these ranchers make a go of it and help them facilitate proper management of the land or we wouldn't be here. Do that's just the way it is.

Q. Were you specifically asked to do anything special or extra or above in regard to Mr. Robbins?

A. Just spend more time there, look closer, watch closer, investigate harder.

Q. Did Mr. Wilkie ever say anything to you about Mr. Robbins that you recall.

A. Mr. Wilkie, yeah.

Q. What do you remember Mr. Wilkie saying?

A. That if I could find anything, to find it.

Q. Do you remember Mr. Leone ever saying anything about wanting to bury Frank Robbins?

MR. ROBERTS: Objection, leading.

A. Bury, I can't remember, Tom.

Q. (BY MR. FRENCH) Did you ever see cattle in trespass on the High Island Ranch from Frank's neighbors [30] that you recall?

A. Yeah, I believe I did. I think that was on Wagonhound Creek.

Q. Did there come a time when you talked with Mr. Vessels about going to talk with Mr. Robbins?

A. Yes, sir.

Q. Tell us about that.

A. Well, I saw what was going on, and of course, I had not authority or privy to this other stuff, that was going, easement to rage—I mean recreation, things like that, but I saw things that were getting really out of hand and I knew I could talk to Frank. Joe called me in his office and he asked me, he said, "You seem to have a rapport with Mr. Robbins, Would you go explain our side to him."

And I tried to explain our side to him. I went out and had this talk with Frank and his wife Karen, and actually you got to remember as a GS-7 range tech, I had no negotiating authority.

Q. And what was the BLM position that you tried to explain to Mr. Robbins?

A. Basically that he had better adhere to the AMP that he had purchased or it was going to get real ugly, and I told Mr. Robbins that if he wanted to avoid this situation on the range land—I had no idea what to tell [31] him about this other stuff because I'm not an easement and realty specialist , I'm a range guy. I told him, "If you want to avoid this range plague that your having with these guys, fence your private out of them, percent federal or not, fence your private, get a trailing permit and do what you want on your private," but as long as you were going to have to deal with them in this AMP, I advised him to follow.

Q. And did you—when you talked with Mr. Robbins about this, did you express to him anything about your being tired of having this role or working for the BLM in this situation?

A. Oh, Yeah.

Q. What did you tell him?

A. Just flat out that I—I Can't do this anymore.

Q. Can't do what anymore?

A. Play these political games when what's really at hand here is the range to me. I mean, this is out of control and I told Mr. Robbins that and I said, "There's not much I can do to help you and I've been through this

two or three times with other permittees, and I'm just a GS-7 range tech and I've got plenty of documentation to retire and I'm getting out of it. Good luck."

Q. Did you tell Mr. Robbins anything like that of he—it was going to get ugly or there was going to be war [32] with the BLM or something like that?

A. You bet I did.

MR. ROBERTS: Objection, leading.

Q. (BY MR. FRENCH) Which, if any, of those things did you say?

A. I told him there would be war, a long war and they would outlast him and outspend him. And boy, sure got ugly after that.

Q. So after you spoke with Mr. Robbins, did you go back and talk with Mr. Vessels?

A. Yes, sir.

Q. And what was your conversation with Mr. Vessels?

A. I told him exactly what Mr. Robbins had told me, which was he wasn't going to let them tell him what to do as far as his private land went, and that I couldn't be of any more assistance, and Joe said, "That's fine, it's out of your hands. We'll take care of it."

Q. And how much longer did you stay with the BLM after that?

A. Three months maybe, two. Within a week or two I put in for my retirement.

Q. And why is it that you retired at that point in time?

A. The technical reason, the paper reason or why I retired?

[33]

Q. In your heart.

A. I was over it.

Q. Did it have anything to do with Frank Robbins and how he was being treated?

MR. ROBERTS: Objection, leading.

A. Frank Robbins was the volcanic point, yes. Was he the reason? Heck, no. He was the volcanic point.

Q. (BY MR. FRENCH) And who did you—did you announce your retirement to anybody face to face?

A. Joe Vessels.

Q. What was his reaction?

A. He went ballistic.

Q. Do you know why that was?

A. No. I have no ide

A. I walked in and I told him. I said, "I think I have enough documentation to retire with a disability retirement and I'm applying," he said, "Don't I have nothing to say about that?" And I said, "Nope. You're my manager, but your not office personnel management. They will make that decision and if I qualify, I'm taking it, and if I don't, you're stuck with me, so you better transfer me after that because I'm disgruntled." That was in his office.

Q. Do you believe in the mission of BLM?

A. Yes.

Q. Has your retirement from the BLM been difficult?

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[36]

Q. (BY MR. FRENCH) Mr. Parodi, I don't have a whole bunch more questions. I have a few, after I get done, Mr. Roberts will have an opportunity to ask you questions. . . . Was there ever a time when you saw cattle out on Mr. Robbins' place and a neighbor's place and you went to ask Mr. Vessels what you should do about that?

A. I don't remember Tom. Gosh.

Q. Do you remember a time specifically when Mr. Vessels asked you to treat Mr. Robbins differently?

MR. ROBERTS: Objection, leading.

A. Again, I was led to believe that I needed to spend more time doing my job on the High Island Ranch, which obviously meant looking for something to trespass for or at least keeping him in compliance.

Q. (BY MR. FRENCH) I believe you mentioned that you were sent out to look for and find anything you could on Frank Robbins. Who would send you out to do that, who would tell you to do that?

A. Gene Leone, Chuck Wilkie, Joe Vessels.

Q. Who was Joe Vessel's boss?

A. Darrell Barnes, I imagine. Or his immediate supervisor, I think, at the time it was Chuck Wilkie and then up the ladder.

MR. FRENCH: I have no further questions.